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BICULTURALISM AND THE ENGLISH-LANGUAGE MEDIA

A Study Prepared for the Royal Commission on Bilingualism and Biculturalism

by

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## SUMMARY

This study begins with a survey of some of the problems that arise in the attempt to use the media for purposes of persuasion, especially in a country such as Canada (Chapter One). It goes on to consider the various media and their potential role in the fostering of Canadian biculturalism (Chapter Two); and concludes with some generalizations about media policy (Chapter Three).





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INTRODUCTORY NOTE

This study was commissioned at rather short notice in the spring of 1965, and written under great pressure and in the face of many distractions during the summer of the same year. For these reasons it is more episodic and impressionistic than I should ideally have liked it to be.

I was charged with the task of writing a "critical and philosophical" essay on the role of the English-language media in promoting bilingualism and biculturalism. What I have written hardly qualifies as philosophical, and may seem much too prescriptive to form part of a supposedly detached and objective research programme. However, it proved difficult to isolate and diagnose problems without at the same time suggesting possible solutions.

Throughout, I have avoided use of the term "mass media" because I feel that it has undesirable associations with the idea of "mass society." Newspapers, movies, radio and television are, of course, often used in the attempt to manipulate opinion in an irresponsible way (though we shall see that this is harder to do than people used to think), and, to the extent that such attempts are successful, may be considered agents of mass persuasion. But the responsible use of these media, which is what we are concerned with, may have a different effect: it can help maintain a vigorous popular democracy.

Unfortunately, there is no generally accepted alternative to the usual term, so I have made a rather unsatisfactory compromise by using the

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unqualified word "media." By this term I mean all those means of communication which involve production by teams of technical experts at one end of the process, and reception by a large, dispersed and diversified audience at the other. I dislike glorifying (or, if you prefer, debasing) the mere plural of "medium" in this way, but the gain in economy seems worth the price.

It does not appear to me that the "media" can do much in a direct way to encourage functional bilingualism--except to be available in both languages from coast to coast. I have concentrated almost exclusively on the problem of how the English-language media may be used to foster awareness and understanding between members of Canada's two main linguistic communities.





CHAPTER ONE

The Media in the Modern World

During the past fifteen years, three Royal Commissions have reported on problems related to the task of preserving and advancing Canadian culture. There have been the Massey Commission on national development in the arts, sciences and humanities (1951), the Fowler Commission on broadcasting(1957), and the O'Leary Commission on publications (1961).

Each report makes some reference to that cultural duality which is the most important single fact about this country. Nevertheless, a reader who considers these documents from the vantage point of 1965 may be surprised to see how cursory and peripheral to the main concerns of the reports such references are. If the commissions were reconstituted today and ordered to draft new reports, they would have either to make drastic changes in emphasis or to face the indignation of the French Canadian public. When the Massey Report was first published, Quebec nationalists complained that its bias was not merely anglophone, but anglophile;<sup>1</sup> yet two of the Commission's five members were distinguished French Canadians. It is true that one of them, M. Arthur Surveyer, appended a lengthy reservation to the report; but it was a defence of the principle of free enterprise in the field of communications - the very antithesis of an argument for nationalism. In the political climate of today, a federal commission with such a wide-ranging brief would probably not even be appointed in the first place, but if it were,

1. inter alia Michel Brunet, Canadian et Canadien (Montreal, 1955)

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it is unlikely that the minority report of a French Canadian member would be a doctrinaire defence of laissez-faire in the field of communications.

And yet the disabilities of which French Canada complains, and which have led to the appointment of this Royal Commission are not new ones. Most of them go back to the time of Papineau or before; they were reflected in the Riel rebellion, the Manitoba schools controversy, the argument about conscription in two world wars, and the battle over federal aid to universities. Yet, during the past five or six years, dissatisfactions which have been borne for generations have suddenly come to seem intolerable. Why?

Among the complex of economic and social developments which have contributed to this crisis of confederation, one of the most important has undoubtedly been the rise of the new media. It is a paradoxical fact that improved communications have helped to put an end not merely to the willingness of French Canadians to accept an inferior role in the national economy, but also to certain convenient mutual misunderstandings which have hitherto enabled the two communities to live peacefully side by side.

One of the basic facts about Canada from the very beginning has





been the lack of intellectual and cultural (as distinct from economic and political) intercourse between its English and French speaking citizens. In Karl Deutsch's terms, Canada constitutes a society ("a group of people who have learned to work together"),<sup>2</sup> but not a community (a group "who have learned to communicate with each other and to understand each other well, beyond the mere interchange of goods and services").<sup>3</sup> Deutsch points out that the facilities for communication of a national community or people extend beyond mere language to systems of writing, painting and calculating, libraries, statues, signposts and a good deal more.<sup>4</sup> There is a "silent language" of gesture, shared experience, taboos and conventions which can be more eloquently unifying than all the patriotic orations ever made.<sup>5</sup> The Swiss speak four different languages, but a variety of other communicative facilities enables them to constitute one people; Canadians speak only two main languages, but, as we know, they have been and could be again "two nations warring in the bosom of a single state."

Modern Switzerland gradually evolved between the sixteenth and the nineteenth centuries in response to political pressure from outside and the pull of common interests and traditions from within. Unlike Canada, her linguistic divisions (75% German, 20% French, 4% Italian, 1% Romansch)

2. Nationalism and Social Communication (New York, 1953), 61

3. Deutsch, 65

4. Deutsch, 70-71

5. See Edward T. Hall, The Silent Language (New York, 1959)





are offset by contrasting cultural patterns. For instance, though German is the first language of three out of four Swiss citizens, French carries greater prestige and is almost invariably spoken when French and German Swiss converse. (Incidentally the proportion of really bilingual French-speakers is fairly small.) Furthermore, there is little correlation between language and religion: 57% of the population are Protestant and 41.4% are Roman Catholic, but substantial numbers of all linguistic groups are to be found in both religious camps. Finally, each of the three largest linguistic communities lives close to a major European state speaking the same language, so none of them feels an isolated or threatened minority.<sup>6</sup>

The history of modern Canada began, less auspiciously, in 1759 with a military conquest. The two communities whose fates were thereby linked shared few traditions in common, and subsequent events have done little to increase them. French Canadians form a racially, culturally and socially homogeneous community whose well-defined patrie has its heartland in the St. Lawrence valley. They share three hundred years of continuous history which lives today not only in the tragic myth which provides emotional depth to the separatist movement but also in the fact

6. I have taken all this information from Kenneth D. McRae:  
Switzerland: Example of Cultural Coexistence (Toronto, 1964)



that practically any French Canadian can, if he wishes, trace his ancestry back hundreds of years to the moment when the founder of his family first set foot on this continent. French Canada inherited no tradition of self-government from the ancien régime (her political institutions are a sometimes uneasy compromise between British theory and French practice) and managed to reach the twentieth century without undergoing the trauma of any of the great political revolutions of Europe or America: the Papineau Rebellion was no equivalent for 1641, 1688, 1776, 1789, or 1848. French Canadian culture has always been strongly oral. It is rich in song and legend, until recently poor in poem and book. It took a long time for the habitant's contempt for theoretical learning to give way to the present educational ferment. The cours classique - for generations the sole avenue to higher education - was built around the study of the ancient languages, philosophy and formal rhetoric. Of the three traditionally prestigious French-Canadian professions, two - law and the priesthood - have a strong oral element; and, in Quebec, politics and oratory are almost inseparable sister arts. Precisions may rightly feel that these generalizations are too sweeping and require qualification; I offer them only in order to draw a broad contrast between the two Canadas.





The cultural history of English Canada is different in almost every respect. English Canadians form a racially, religiously and culturally miscellaneous society thinly dispersed over an enormous and geographically diverse territory. Because their ancestors emigrated to Canada at different times, for different reasons and from different places, English-speaking Canadians have no common traditions to match those of the Québécois, nor do they share a language of comparable richness (compare the styles of politicians in Ottawa and Quebec City. For Messrs. Pearson and Diefenbaker language often seems a predicament rather than a means of communication; for MM. Lesage and Johnson it is a joy). Living uneasily in the margin between the cultures of Great Britain and the United States, they agonise interminably and unprofitably about their "sense of identity"--something French Canadians seldom need to do because they know only too well who they are. Such as it is, the English-Canadian identity has strong regional variations which often match those of the American population to the south. English Canada has inherited the full legacy of protestant, capitalistic individualism, with its emphasis upon production, its reliance upon specialization and standardization, and its reverence for literacy as the essential means for both religious and economic salvation. If the culture of French Canada is oral, then that of English Canada is visual, based upon the printed rather than the spoken word.<sup>7</sup>

For almost two centuries these oddly matched communities (if English Canada can be called a community) have been able to share the northern half of this continent without serious conflict. This was possible, in

7. The careful reader will have detected the influence, in the last two paragraphs, of: The Gutenberg Galaxy (Toronto, 1962)  
and  
Understanding Media (New York, 1964)

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part because the aspirations of French and English Canadians tended to be complementary. Each could attain a measure of fulfilment without inconveniencing the other. Since there was a minimum of communication between the two groups, many potential sources of conflict were not even noticed. (I grew up in Montreal in almost total ignorance of French Canadian life; not until I joined the army and served in small Quebec towns did I learn something about it, and discover that many French Canadians were almost as uninformed about les anglais as I was about them.)

In the affluent 1960's, the French and English communities are beginning to become much more alike than separatists on either side would probably care to admit, and the two solitudes are far more noisily aware of one another than they were when Hugh MacLennan wrote his novel a generation ago. But likeness has helped to produce rivalry and conflict where it hardly used to exist; and increased knowledge has contributed less to understanding than to the awareness that there are some almost irreconcilable differences of style and values yet remaining. The fact that so many English Canadians are still pathetically asking "What does Quebec really want?" is a sign not merely of ignorance but of the extreme difficulty of communication across this particular cultural boundary. The preliminary report of this Commission contains much evidence of the existence of this invisible barrier.

In truth, one can learn "what Quebec wants" only by entering imaginatively into the life of her people. The salvation of Canada may depend on the ability of a substantial minority of the English population to do





just that. But even this will be of no value if it does not lead to a wider tolerance for Canada's cultural duality in the population as a whole. Here is an apparently natural task for the new media of communications.

But is the matter as simple as many people seem to think? A few years ago, the media were credited with almost superhuman powers, both for good or ill. Pessimists cited Hitler and "hidden persuaders" as examples of their sinister potential; and optimists prophesied vast improvements in popular taste and political awareness. Today, both apocalyptic visions are out of fashion. Recent studies have tended to emphasize how circumscribed are the conditions under which the media are able to effect any kind of change whatever.<sup>8</sup> The gloomy truth for reformers seems to be that the media are far more likely to reinforce existing attitudes and habits of mind than to create new ones. It is at least arguable (and I shall do so later in this essay) that the Canadian media have tended to make French Canadians more French and the English Canadians more . . . American--in each case intensifying tendencies which were apparent long before the rise of the media. Those who hope to use the media countercyclically in the service of Canadian unity will have therefore to be highly skilful and very patient in going about it.

In a brilliant article, Thelma McCormack argues that the media can best be understood not as special and debased kinds of art or somewhat imperfect forms of communication, but as complex social institutions in

8. The indispensable study is J. T. Klapper, The Effects of Mass Communication (Glencoe, 1960), a summary of research on the subject.



their own right, like the family or the school, and, like other institutions, subject to dysfunction. In a society undergoing a process of secularization (i.e. a diminution of primary, non-utilitarian, face-to-face relationships) their unique function is:

to provide both to the individual and to society a coherence, a synthesis of experience, an awareness of the whole which does not undermine the specialization which reality requires. The supreme test of the mass media, then, is not whether it meets the criteria of art or the criteria of knowledge, but how well it provides an integration of experience.<sup>9</sup>

If we accept this definition, then the media can be used to help man understand himself and his society (and ultimately, therefore to understand others and their society); they cannot very easily be used to achieve some hypothetical goal, such as a bilingual unhyphenated Canadian culture. Those who make such an attempt will lose their audience.

Resistance to persuasion of this kind takes many forms. The most easy and popular is avoidance of exposure. People will avoid reading newspapers or watching television programmes which they fear may confront them with disturbing facts or opinions. In a famous experiment, Paul Lazarsfeld conducted a survey of the audience for an American radio series designed to encourage tolerance for various ethnic groups. He found that the audience for each programme was made up almost entirely

9. Thelma McCormack: "Social Theory and the Mass Media," Canadian Journal of Economics and Political Science, XXVII, (1961) 479-488





of members of the ethnic group being praised. The others instinctively protected themselves against the danger of having to shed their prejudices.<sup>10</sup> Another investigation has shown what one might have expected, that smokers read far fewer articles than non-smokers on the connection between cigarette smoking and cancer, and that they are far readier than non-smokers to clutch at any straw of doubt in the anti-smoking argument.<sup>11</sup>

If a popular audience fails to avoid exposure to ideas that might prove disturbing, it still has avenues of defence against the necessity to change opinions. Only the most direct and literal statement of an unpalatable truth is likely to be understood; hints are usually not taken up. Programmes on racial discrimination which depend upon analogies with what happened in Nazi Germany were found to have little or no effect upon the prejudices of American audiences against Jews and Negroes in the U.S.A. Most of the audience either couldn't or wouldn't make the obvious inference concerning their own attitudes to racial minorities.<sup>12</sup>

For these reasons, the reactions of large and miscellaneous audiences are often difficult to predict. David Riesman speculates on the possibility that even a film like Gentleman's Agreement, an exposé of upper-middle-class anti-semitism, may have been used by many who saw it, not as an indictment of genteel racism, but as a guide to socially approved and respectable prejudices.<sup>13</sup> A few years ago, the BBC ran a radio series designed to help housewives plan a holiday in France, but actually

10. Klapper, 21

11. Klapper, 21, 23

12. Klapper, 84-5

13. I have been unable to rediscover the article in which this observation appeared.



succeeded in discouraging more prospects than they encouraged, by revealing possible difficulties with language, customs and currency that the audience hadn't previously taken into consideration.<sup>14</sup>

These examples of imperfect communication, selected almost at random from a wealth of empirical studies, illustrate the complexity of the problems faced by those who wish to use the media responsibly in a society where not only ignorance, prejudice and suspicion divide the population, but also legitimate and desirable cultural differences. When the media must be used to sell goods as well as to amuse, inform and persuade, one has the confused state of Canadian broadcasting today.

A great step towards making theoretical sense out of this muddle was taken by Alan Thomas in his seminal article "Audience, Market and Public: a Theory of Canadian Broadcasting,"<sup>15</sup> which helps to clarify not only Canadian broadcasting, but all the popular media. Thomas points out that the three terms of his title, often used as though they were almost synonymous, actually stand for very different kinds of relationship between participants in a communications system. The idea of the "market," for instance, defines listeners, viewers or readers in economic terms; the standard of value is money. The "market" is the creature of commercial publishers and broadcasters and is measured by ABC statistics and Nielsen ratings. It is continental rather than national, hostile to political or linguistic boundaries, and indifferent to the intellect. Among its characteristic institutions are Ed Sullivan, the

14. W. A. Belson "Communication through Broadcasting," Canadian Communications II (1961) 35

15. Canadian Communications, I (1960) 18-45





Hit Parade, the Reader's Digest and Weekend/Perspectives. Though the market usually plays the role of ogre in the mythology of Canadian nationalists, highbrows and separatists, even its bitterest critics cannot avoid being a part of it from time to time if they live a normal life in modern society.

The "public," as Thomas defines it, is the voice of active and concerned opinion expressed through such media as newspaper editorials, community organizations, pressure groups, letters to the editor and the ballotbox. Though sidewalk interviews, open-line radio programmes and public opinion polls are attempts to redefine it in terms of the newer media, the idea of the "public" continues to have stronger associations with magazines and newspapers than with the newer electrical media, and is closely identified with the established middle class.

For good or for ill, the public is the great antagonist of the market and its values. For good, because the public is Canadian (French or English) and stands for some kind of intellectual standard; for ill, because the public tends to be culturally conservative, hostile to the new media, and inclined to identify its own values with those of the community as a whole. (This last tendency helps to account for some of the grosser miscalculations about the effect of the media on society.) All the Royal Commissions concerned with Canadian culture from the Aird on radio broadcasting (1929) to the Laurendeau-Dunton on bilingualism and biculturalism have been appointed in response to pressure from the



public; and, apart from a few (in some ways ill-chosen) concessions by the Fowler Commission, their reports have been uniformly hostile to the pretensions of those who claim to speak for the market. Yet none of them, no matter how admirable their intentions and many of their achievements, shows much feeling for any of the popular arts or real understanding of what the new media are doing to society. They almost ignore the existence of an audience which cannot be identified with either public or market.

This, says Thomas, is the most mysterious and unpredictable element in modern communications. Once it was public and communal in theatre or village hall, but now the audience for books, periodicals, radio and television is both private and dispersed. The largest audiences are held together not by reason, argument or shared convictions but by common tastes in entertainment. Radio and television, particularly, are continuous services, available at a flick of the wrist, and obviously cannot expect deep commitment or involvement from their audiences except under unusual circumstances such as President Kennedy's assassination. Those who wish to persuade must do so indirectly, because, as we have seen, the audience looks to the media for the assurance of what is familiar: this is as true of the intellectual who occasionally relaxes with James Bond or The Man from U.N.C.L.E. as of anyone else. Anyone who tries to shock or to ask too much will find his audience (even those who, as members of the public, demand stronger fare) slipping away to other channels or to media which are more comfortable to live with.



Those who try to think straight about the media in Canada must take into account these three interests. As things stand, the market foots most of the bill for the various media so it has the right (which it exercises relentlessly and repetitively) to call most of the tunes. But the market is continental in scope; it recognizes neither the political boundary between Canada and the United States nor the cultural boundary between English and French Canada. Simply by force of wealth and numbers it is an overwhelmingly American institution.

For that reason, the Canadian public has set out through copyright legislation, preferential postal rates, the licensing of broadcasters, the operation of a radio and television system, and other similar measures, to make sure that the Canadian audience is exposed to at least some material which reflects Canadian life and expresses distinctively Canadian values. Unfortunately, the audience is hardly more limited by boundaries than the market (though the language barrier is unhappily more effective than the Forty-Ninth Parallel): Canadians regularly read more American magazines than Canadian ones, newspapers are full of American syndicated features, and television stations in the northern U.S.A. have notoriously large followings in Canada. Anyone who wishes to maintain contact with the English Canadian segment of the audience has no alternative but to cater lavishly for these tastes. One of the most important and significant facts about English and French Canada during the past generation has been the reversal of their attitudes towards the threat of such cultural assimilation: at one time the French practised





a kind of defensive isolationism for fear of becoming anglicised, and English Canadians (preoccupied with cutting the remaining ties with Mother Britain) felt relatively secure from the challenge of American culture; now, the English feel threatened and confused about their identity, while French Canadians are beginning noisily and exuberantly to express a newly-found self-confidence. Surely the development of the media has played some part in bringing about this astonishing transformation.

To reach this conclusion may seem like denying all that has been said before about the limited capacity of the media to effect change. But, of course, the changes in attitude which we have been discussing were all implicit in Canadian society when radio and television came of age. The French-speaking community of eastern Canada might have been designed for television broadcasting. It is clearly defined by language and shared experience, large enough to provide a variety of sub-audiences, and small enough to avoid impersonality. One feels this sense of intimacy the moment one switches from the CBC to Radio-Canada TV. So television has merely enhanced and concentrated what was already a powerful sense of French-Canadian identity. It seems hardly necessary to elaborate on the less inspiring consequences of television for English Canada. One telling detail should be enough: the CBC, that instrument of enlightened Canadian nationalism, cannot or dare not plan its fall television schedule until after the American networks have announced theirs.



But is it really true that the media are so inhibited by the inertia of the status quo that they are incapable of bringing about significant change? Marshall McLuhan would answer that this question itself belongs to an old fashioned mode of thought which treats "content" as though it were something that can be abstracted and considered apart from the medium in which it is presented. In his view, "The medium is the message": people are changed by the very fact of participating in the new media. Compared to that change, minor shifts attributable to mere content are hardly worth bothering about.<sup>16</sup>

McLuhan's slogan was a useful trumpet blast to bring down the walls of the bookman's Jericho, but if it conveyed the whole truth about the media, there would have been no point in beginning this article. In spite of the empirical cautiousness of the social scientists and the prophetic recklessness of McLuhan, common sense seems to suggest that, under favourable circumstances, the media can sometimes be used to persuade or convert. Certainly the millions of dollars that keep Radio Free Europe, the Voice of America and their communist counterparts on the air are spent in the hope that they can reach the minds as well as the ears of their audiences. But the evidence seems to suggest that they seldom succeed. Wartime propaganda broadcasts often have a negative rather than positive impact, by stiffening the will to resist. When such broadcasts are effective, it is often for special and unpredictable reasons. Klapper cites the hypothetical (but typical) case of an East German, loyal to the communist régime, who unexpectedly receives a set-back in his career

16. Understanding Media, passim.





or is drafted into the army. He may begin to listen to the Voice of America and other instruments of western propaganda, and end up by adopting "western" opinions in their most extreme form.<sup>17</sup> Of course, this kind of "motivated move" sometimes occurs in the other direction too. The lesson here for Canada is that no amount of propaganda for or against biculturalism will have any effect if it is not confirmed by the daily experience of those at whom it is directed.

The most spectacular recent shift of attitudes in a free society has undoubtedly been the transformation of American public opinion on the subject of civil rights. In the South there has been an extraordinary about face on a whole range of subjects connected with integration. According to a Gallup Poll taken in 1963, 61% of white southern parents said that they would object to sending their children to a school where a few pupils were coloured. In 1965, two years later, the majority had become a minority of only 37% still opposed even to token integration.<sup>18</sup>

Many factors undoubtedly contributed to this shift, but television must surely be given a great deal of credit. It is well known that people like, if possible, to hold majority opinions. In the old days, local newspapers edited for southern communities could give readers the feeling that their prejudices were shared by the overwhelming majority of their fellow citizens. But now, just as American television from New York and Hollywood has extended its antennae across the border into Canada, so it has also incorporated the South as a minority element in the national aud-

17. Klapper, 67-8

18. Montreal Star, 10 June, 1965.



ience. It is only a matter of time until the South comes to accept, with varying degrees of reluctance, the whole great American consensus. It is doubtful, however, whether there is any comparable Canadian problem to which the media could make an equally dramatic and socially desirable contribution.

Extending civil rights to the southern Negro is largely a matter of dissolving the minority culture of the South in the great American melting pot. Nurturing Canadian biculturalism involves almost exactly the opposite process: maintaining healthy local traditions wherever possible in order to sustain a rich, diversified and tolerant society secure enough to resist American blandishments without and fissile pressures within. In practice, this means that the natural tendencies of the commercial media must be counteracted through government intervention of various kinds.



## CHAPTER TWO

### The Canadian Media

#### I. THE PRESS

##### 1. Newspapers

It has become almost a cliché to say that the daily newspapers of English Canada are local and provincial institutions. In spite of Canadian Press dispatches, advertisements printed from mats prepared in Madison Avenue or Montreal, and American syndicated features, front pages still reflect the view that a dog-fight on Main Street should take precedence over riots in Athens and earthquakes in Japan. To readers of the Vancouver Sun, the headlines in to-day's Montreal Le Devoir will seem hardly more remote and exotic than those of the Toronto Star or the Halifax Chronicle. Even the greatest metropolitan dailies don't quite manage to transcend their local roles: there is no English-Canadian equivalent to either the London or the New York Times.

In the Province of Quebec, however, one French language newspaper has so large a circulation that it is in a different category from all the others. The Montreal La Presse, is so important to the French Canadian community that, a few years ago, the provincial government intervened in a family dispute over ownership and policy, in order to regularize its financial and legal status. A rival to La Presse, in prestige and influence if not in circulation, is Le Devoir which during the past ten years has gradually developed from a precariously financed journal of nationalism and opposition to the Duplessis regime to become the unofficial voice of the French Canadian intellectual establishment. It is no reflection





on other excellent French newspapers to say that these two enjoy a unique eminence throughout French Canada.

The Canadian newspaper scene thus duplicates in miniature the basic contrast that we have observed everywhere between the French and English communities: relative unity, homogeneity and concentration on the one side, diversity and dispersion on the other. It is not surprising that the Canadian Press finds it difficult to serve both language groups equitably or that there is a movement afoot among French Canadian publishers to pull out and form their own cooperative news service. The needs of English and French newspapers do not always coincide, and French Canadians are naturally not enthusiastic about reading speeches by General de Gaulle retranslated into French from an English version sent out on the wire by the Associated Press (this has apparently actually happened).

Nevertheless, the Canadian Press could be an important instrument of enlightened biculturalism if steps were taken to increase French Canadian participation not only in the various domestic bureaux (especially Ottawa) but also abroad. It is high time that Canada became less dependent upon American agencies (which have their own national and commercial axes to grind) for its foreign news, and an influx of French-speaking correspondents would help to make such a development possible. If the increased costs should prove beyond the means of member newspapers, there is a clear case for some form of government subsidy.



Five years ago, I wrote a rather bleak and gloomy survey of the English-language press in Canada, and concluded that prospects for the future were for further declines in quality and seriousness.<sup>19</sup> It is pleasant to be able to eat those words, at least so far as some newspapers are concerned. In general, the better papers seem to have become still better, while the poorer have at least not got much worse. (I shall resist the temptation to try to account for the inaccuracy of my prophecy.) Along with the rise in journalistic standards, the coverage of French Canadian affairs has greatly improved (not that there isn't room for still further improvement).

Apart from such basic and elementary steps as increasing the number of reporters assigned to French Canada, English newspapers are even beginning to pay some attention to French Canadian culture. Several newspapers print weekly surveys of editorial opinion in the French press. The Globe and Mail has a regular monthly review of recent French Canadian books, and the Montreal Star prints weekly reviews of the local French theatre scene. Undoubtedly, features such as these are read by only a small minority of those who buy the papers, but their influence cannot be reckoned in terms of numbers. Newspapers should be encouraged to become still more ambitious. Perhaps the Canadian Press could send out a regular weekly column of reviews and cultural news from Quebec. French-language publishers should send review copies of their books to

19 "The Mass Media," in Social Purpose for Canada, ed. M. Oliver (Toronto, 1961)





the major English dailies from coast to coast. The Canada Council or some other body might subsidise this enterprise.

The duty of a newspaper today goes beyond the mere accurate presentation of facts. Wars, riots, crime waves, new educational methods--to report these adequately to a non-specialist public is to provide background information and interpretive comment. Nowhere is this sort of thing more necessary than in news stories emanating from Quebec. Yet we are astonishingly short of "cultural middlemen" capable of explaining and interpreting French Canada to the rest of the country (and vice-versa, for that matter). I can testify from personal experience that it is often easier to keep up with intellectual and literary developments in Paris than to keep abreast of what is going on among the French-speaking intelligentsia of my own city of Montreal. In the long run, this is, of course, an educational rather than a journalistic problem. More ambitious programmes of French Canadian Studies in English-language universities might help to increase the supply of reporters equipped to cover the Quebec scene.

## 2. Popular Magazines

Three of the largest Canadian popular magazines--Weekend/Perspectives, MacLean's/Le Magazine MacLean and Reader's Digest/Sélection du Reader's Digest--are published, like unidentical twins, in French and English formats. It would be pleasant to be able to report that the impulse behind these bilingual enterprises is a concern for Canadian unity, but the



motive in each case is to provide a wider and more attractive market for advertisers. Those who are concerned with maintaining the Frenchness of French Canada are understandably just as suspicious of this sort of cultural imperialism as many English Canadians are of the "Canadian" editions of Time and Reader's Digest.

Of course all three French "twins" are specially edited (sometimes well edited) to cater for French Canadian interests, and each includes material which is not merely translated from the English. But the fact remains that final editorial control rests with English Canadians or Americans and these publications represent just as "unfair" competition for French language publishers as their American equivalents do for English Canadian ones. It is a pity that neither economics nor popular taste seem to favour the idea of reversing the flow and bringing out an English edition of Le Samedi.

Canada's popular English magazines make little attempt to dramatise or explain French Canada to their readers except in terms of the sensational (accounts of terrorist violence), the "colourful" (picture stories on the St. Jean Baptiste parade) or the "controversial" (usually profiles of René Levesque). A magnificent exception was MacLean's during a few great years which came to an end in 1964. At a time when even the CBC was fumbling the task of fostering unity and tolerance, this popular magazine became for a while the most eloquent, imaginative and adventurous voice of enlightened Canadian nationalism. But the anomaly did not continue long. Management feared the impact upon advertising revenue of



this brand of responsible journalism, several members of the staff resigned, and MacLean's lapsed back into mediocrity.

Of all the media, popular magazines appear to be the least amenable to direct or indirect influence by bodies such as Royal Commissions or Canada Councils. For better or for worse, they can only be left to find their own intellectual and artistic level.

### 3. Intellectual Journals

Research has shown that shifts in attitude and opinion are more often brought about by means of face-to-face contact with locally influential individuals called "opinion leaders" than through the media of press, radio or television. Opinion leaders, it has been found to no one's surprise, tend to "expose" themselves to a wider range of media than ordinary citizens.<sup>20</sup> In a comparatively small population such as that of Canada, therefore, books and periodicals with very modest circulations may have an influence out of all proportion to their size.

Canada is much richer in such middle and highbrow publications than she once was, and the effort to maintain a dialogue between English and French Canadians is taken more seriously at this level than at any other.





Culture publishes articles in both languages, and so does Canadian Literature. The two main monthlies of the liberal left, Canadian Forum and Cité Libre, often print translations of each other's articles. It is most unfortunate that Canadian Communications, a journal devoted to the systematic study of communications problems in a bilingual society ceased publication after six issues (1960-61). It should not have been allowed to die, and ought to be revived.

Perhaps there ought to be a special agency to encourage and support projects involving translation or bilingual publication. The annual budget need not be very large; it might be administered by the Canada Council. Support should be extended to publishers of books as well as periodicals. There is a need for more reasonably priced paperbacks such as the invaluable two-volume reader on French Canadian Society, edited by M. Rioux and Y. Martin and published in the Carleton Library series by McClelland and Stewart.

## II. FILM

The language of pictures is popularly supposed to transcend ordinary linguistic boundaries, and the cinema is undoubtedly the most international of all art forms. That being the case, one might expect the National Film Board to be one of the great instruments of Canadian unity in dualism. That it is not is due to a number of circumstances which have nothing to do with the high quality of the work turned out by the board.



In the first place, the system of film distribution and exhibition in Canada is unfavourable to the development of a popular native movie industry. Except when they are shown on television, Canadian films usually have to be content with minority audiences. There are signs that a breakthrough into the commercial cinemas may be coming, but the time is not yet. Meanwhile most Canadian motion pictures hardly qualify as "popular" media in the strict sense of the term. They share the audience of Tamarack Review or Liberté rather than that of Weekend magazine.

The early productions of the NFB all bore the impress of the Board's first great Commissioner, John Grierson. For almost two decades that quiet, essentially British, style of documentary realism was (apart from an occasional lone genius like Norman McLaren) the only living tradition of Canadian film-making. However, when the beginning of la révolution tranquille in Quebec more or less coincided with the triumph of la nouvelle vague in French cinema, and intense politico-artistic ferment began among French Canadian intellectuals, with the cinema as one of its chief modes of expression. Today, both within the NFB and without it, there is a new and vital school of French Canadian film-makers blessed with access to a sensitive, knowledgeable and passionately dedicated audience.

Meanwhile, the old English Canadian tradition is beginning to produce excellent feature-length films, but under less inspiring circumstances. The Drylanders (about early days in Saskatchewan) and Nobody Waved





Goodbye (about two Toronto middle-class adolescents) both use the sober poetry of documentary to tell a representative story about the lives of ordinary people. When first released they were mild critical successes, but popular failures. Nothing much more might have been heard of either of them if Nobody Waved Goodbye had not scored an unexpected triumph in New York, upon which Canadian critics began hastily to revise their judgments, and exhibitors who had refused to show the picture sheepishly booked it into their theatres. An exemplary documentary about English Canadian apathy and self distrust might be made from this little story.

A Tout Prendre and Le Chat dans le Sac, the two most important recent French Canadian films, belong to an entirely different tradition. Their technique is symbolic and allusive rather than literal and direct. One is much more conscious of the personality of the director, revealed both in the Fellini-like subjectivism of A Tout Prendre (in which the leading actor is the director, playing his youthful self), or the separatist satire of Le Chat dans le Sac. Both these films met with wildly sympathetic and intuitive responses when they were shown to their original audiences. Writing in MacLean's of the first showing of Le Chat, Wendy Michener commented that she had never seen an audience so thoroughly "with it": they seemed to start laughing at the jokes even before they were made. English Canadians, unfortunately, seem to need a signal from London or New York before they can decide whether to laugh at or applaud a film.



In the immediate future there seems little to do that is not already being done to keep open a dialogue between the two schools of film-making. Perhaps the loans which the federal government is proposing to make available to feature producers may tempt someone to film an up-dated version of Two Solitudes.



### III RADIO and TELEVISION

The privately owned, commercial system of broadcasting, which prevailed unchallenged before the establishment of the CBC, and which survives today in the independent radio and television stations represented by the Canadian Association of Broadcasters, is, with rare exceptions, a mere instrument of the North American market. As Alan Thomas has observed, the plethora of radio stations playing the Top Forty records twenty-four hours a day in cities like Montreal, Toronto or Vancouver exists not because of an insatiable public demand for a choice among identical programmes but because the market needs multiple outlets for commercials in metropolitan centres.<sup>21</sup> One would welcome a bold experiment in seeking out minority audiences, large or wealthy enough to attract sponsors, but until someone turns up with the money and will to take a chance, we might as well face the fact that private stations are not going to be either Canadian or public-spirited enough to play much of a role in the current crisis of biculturalism. They are part of another cultural problem which we cannot go into here.

But the Canadian Broadcasting Corporation is a different matter. After the federal parliamentary system and the administrative and judicial structures which serve it, the CBC is undoubtedly the most important single instrument of Canadian national identity. Its President, J. Alphonse-

21. Thomas, 32





Ouimet, has conveniently summarized what he considers to be the four basic aims of the Corporation:

1. To be a complete service, covering in fair proportion the whole range of programming; bringing things of interest, value and entertainment to people of all tastes, ages and interests, and not concentrating on some aspects of broadcasting to the exclusion of others.
2. To link all parts of the country in two ways:  
(1) through the inclusion of a wide variety of national and common interests in its programme services; (2) by using its physical resources to bring the national programme service to as many Canadians as finances allow. Whether Canadians live in remote or heavily-populated areas the national system should serve them as adequately and equitably as possible.
3. To be predominantly Canadian in content and character. It should serve Canadian needs and bring Canadians in widely-separated parts of the country closer together, contributing to the development and preservation of a sense of national unity.
4. To serve equitably the two main language groups



and cultures, and the special needs of Canada's various geographical regions.<sup>22</sup>

This admirable summary is incomplete. It omits to mention a fifth important function which the CBC has performed, with varying degrees of enthusiasm and reluctance since the earliest days: serving the needs of the North American market by (1) linking CBC stations with US networks in order to broadcast programmes sponsored by great international corporations; (2) selling CBC-produced programmes, at prices less than the cost of production, to Canadian "sponsors"; and (3) broadcasting some hundreds of local spot commercials each week. These cannot be treated as mere means of supplementing inadequate public support. The need to compete for commercial revenue has an important effect on CBC programming, scheduling and audience relations. Who can doubt that the CBC would offer a somewhat different kind of service if it had no need to serve the market in this way? (As this is being written, the CBC is appealing to the government for extra income which would make it possible to cut five million dollars of advertising revenue from the annual budget.)

The four avowed aims and the fifth unexpressed one together present CBC management with an extremely difficult and sometimes mutually contradictory set of problems when it comes to determining policy. These resolve themselves into two great and not unrelated dilemmas: how to reconcile the cultural and national orientation of the CBC with the commercial and entertainment values to which the North American

22. CBC Annual Report, 1961-62





audience has been conditioned; and how to reconcile the aim to contribute to "the development and preservation of a sense of Canadian unity" with the aim "to serve equitably the two main language groups and cultures." 23

If we exclude such countries as India or Nigeria, where linguistic and cultural diversity defies any attempt to set up a comprehensive service, no national communications organization in the world faces such a formidable set of problems as the CBC. The Australian Broadcasting Corporation has to compete with commercial rivals and cope with a sparse population in an immense territory, but it has no undefendable electronic border, no need to attract advertising revenue, and no linguistic divisions. In South Africa there are two official languages, but television is forbidden, and radio broadcasting confined within strict limits set by the Nationalist government. The Swiss Broadcasting Corporation (Société Suisse de Radio diffusion) offers full programme services in three languages (plus a limited service in Romansch). But no attempt is made either to make all three services available everywhere in Switzerland or to develop them along similar lines. Broadcasting is supported mainly from public funds (which means that the German majority subsidizes the French, Italian and Romansch minorities) and the Swiss welcome rather than fear competition from German, French and Italian stations outside the Swiss border.

The task of the CBC might be made easier if the Corporation were relieved of the need to raise about a quarter of its total income through the sale of advertising. Advertising is a legitimate function of a

23. See my article "Television and Canadian Culture" in Commentary, (New York) November 1964, pp. 78-81



communications medium, and there is no reason why commercials should be banned entirely from CBC networks; but if they contributed only five or ten per cent of the annual budget, they would no longer be a source of confusion and distortion in the determining of programme policy. Two of the more unfortunate recommendations of the Fowler Commission Report were that the CBC should engage in "vigorous active competition" with private stations for advertising revenue, and that "the policy (except where there are special reasons for specific exceptions) should be that all CBC radio and television stations should be at least self-sustaining in their station operations." 24

In consequence of this advice the CBC was driven to become even less distinguishable from private commercial broadcasters than it already was. The effect upon local radio programming was particularly unfortunate. It is to be hoped that the new Fowler Committee (appointed in 1964 to make recommendations about future broadcasting policy) will attempt to reverse this drift. 25

The CBC can be rescued from subservience to commerce at the annual cost of a few million dollars. But light entertainment will always be the largest category in the programme schedule of any broadcasting service, no matter how exalted its aims. Because of the built-in

24. Fowler - 175-190

25. As it transpired the Fowler Report (published after this study was completed) did not do this.



resistances discussed in Chapter One, most communication with large radio and television audiences must take place subliminally, so to speak, through the implied and reiterated values of popular programmes. Trying to do this in Canada is a complicated and frustrating task.

From 1932 to 1936, the Canadian Radio Broadcasting Commission (ancestor of the CBC) brought programmes over a single network to listeners in both languages, an unsatisfactory arrangement that pleased neither group. By the 1940's, separate English and French networks had been established, a functional division which has culminated in the situation today, when the Corporation sometimes gives the impression of being two separate organizations: the "CBC" with production headquarters in Toronto, and "Radio Canada" with production headquarters in Montreal.<sup>26</sup>

CBC and Radio Canada have each served their communities well, but in different ways and to different degrees. Radio Canada, which does not directly concern us here, has had to rely mainly upon its own resources to fill the radio and television programme schedules, and has done so successfully that their audience is almost passionately loyal. In a survey conducted in 1963, 91% of French-speaking respondents rated

26. Following the example of Albert A. Shea's useful little book Broadcasting - the Canadian Way (Montreal 1963) I shall use these terms as shorthand for the Corporation's two language services.





Canadian television performers as good as or better than those from other countries: the comparable figure for English Canada was 63%, much more heavily weighted toward the less enthusiastic end of the scale.<sup>27</sup>

Clearly, the most important reform that one could wish for Radio Canada is that its full service should be made available from coast to coast, no matter how small the potential audience may appear to be at this time.

The CBC is a different matter. To begin with, it has had to come to terms with its audience's taste for American popular culture. From the beginning, the Corporation has refused to be a mere purveyor of highbrow nationalism (as the CAB would like it to be) and has insisted on presenting a full range of programmes catering to a variety of tastes. In practice, this means a large number of American programmes, not only because most Canadians enjoy them, but also because English Canada seems to lack its own strong indigenous tradition of popular art (Wayne and Shuster, Don Messer and Juliette are exception which, by their incongruous juxtaposition, prove the rule). If the CBC ignored this fact and presented nothing but Canadian programmes it would risk losing the bulk of its television audience to rival stations, and breeding resentment and disillusion among those Canadians who continued watching the inevitably thin domestic fare. However much one may argue about what is just the

27. What the Canadian Public Think of the CBC (Ottawa, CBC Research Dept., 1963) Table 15.



right mixture, it is obvious that the CBC television schedule has to include a proportion of American programmes.

The effect of this situation upon English Canadian viewing habits is both curious and depressing to contemplate. A CBC Research project on How Canadian is Canadian English-language Television?<sup>28</sup> shows that an average 57 per cent of the evening time of seven metropolitan CBC-owned stations was devoted to Canadian-produced programmes, and 39 per cent to programmes produced in the US. (The comparable figures for private Canadian stations were 61 per cent American and 34 per cent Canadian). However, so great is the total amount of American programming available on Canadian and US border stations, and so popular are these programmes with the audience, that 68 per cent of the viewing time of respondents was spent watching them, compared with 30 per cent devoted to Canadian-produced fare. In Vancouver and Toronto, the two greatest English-speaking metropolitan centres (where two or more US border stations are easily received) almost 75 per cent of all viewing in evening hours was devoted to US-produced programmes. The one hopeful element in the findings of this report is that there appears to be a hard-core audience for CBC Canadian-produced programmes which is relatively unaffected by increased temptation from other stations. It was discovered that the entry of a new private Canadian station in five areas where there

28. Ottawa, CBC Research Dept., 1965.



had been minimal competition from across the border (Halifax, Montreal, Ottawa, Winnipeg and Edmonton) reduced the CBC audience by between 55 and 65 per cent. However, in Vancouver, where heavy competition already existed, the new private Canadian outlet took only 40 per cent of the CBC audience; and in Toronto, where the air is thick with competing video waves, there was no noticeable loss at all to the CBC station when CFTO began broadcasting.

Only an extreme nationalist will interpret this evidence in too sombre a spirit. Today, the products of the American media are ubiquitous--hundreds of millions of people all over the world see programmes such as Bonanza each week (admittedly there is "Canadian content" here in the person of Lorne Greene)--and there is no reason why Canada should be an exception. American triviality is not necessarily any worse than Canadian triviality; and the best American programmes are certainly not inferior to the best CBC ones. In any case, Canadians and Americans share a continent and many common traditions. Who is to say that a ratio of two North American to one uniquely Canadian element does not accurately represent the correct recipe for English Canadian culture?

Nevertheless, we are left with a number of inescapable conclusions. First, further extensions of the commercial role in broadcasting can only lead to erosion of the Canadian sense of identity. Second, English Canadians will never match the passionate nationalism of their francophone compatriots; and this difference will be a recurring source of misunder-





standing and conflict between them. Third, the CBC has severe limitations upon its freedom to influence English Canadian opinion on the subject of biculturalism. This last conclusion is the one which concerns us most.

Probably the most successful of all attempts to dramatise French Canadian life for English television viewers was the English version of La Famille Plouffe. Unfortunately this entertaining series presented an image of the French Canadian family which accorded only too well with English Canada's stereotype of the innocence and quaintness of Quebec folkways. The bombs of the young separatist terrorists blew the world of the Plouffes as sky-high as the Queen's mailboxes. It seems rather a pity that young Quebec intellectuals would now be as little likely to speak well of the Plouffes as an American Negro member of CORE to praise Uncle Tom's Cabin. Yet this serial was the only sustained and believable popular image of family life that either English or French Canada has ever succeeded in producing outside of books.

The truth about the new Quebec is probably more than any but a minority of English Canadian viewers are capable of accepting without panic or hostility--or both. News about riots, Quebec's "demands" (often based on a mistranslation of demandeur) or campaigns to extend and preserve the use of the French language symbolize, for a great many English Canadians, not that we are a unique bilingual and bicultural country, and should be proud of it, but that they are somehow threatened by people with an alien and unsympathetic way of life. Panel discussions, interviews with



political leaders and documentaries all run the danger of dramatizing elements which separate rather than unite the country.

There have been attempts to bridge the cultural gap by producing bilingual variety programmes poking fun at or praising Canada's dualistic tradition. My own subjective judgment of the results is that there is too little common ground between the two audiences to make such programmes anything but self-conscious and stiff. This impression is confirmed by a CBC study carried out after a Wayne and Shuster "Show from Two Cities" broadcast on both television networks in the spring of 1964.<sup>29</sup> Though this programme later won a prize in an international competition, the attitude of the original viewers, both French and English speaking, was cool towards it--the index of appreciation was much below the average for Wayne and Shuster shows. There was almost no correlation between the reactions of English and French viewers to various parts of the programme, indicating that the broadcast failed to discover or develop a community within its audience. Incidentally, the English audience demonstrated its covertly separatist tendencies by objecting far more violently than their French compatriots to the bilingual format of the programme. Only 22 per cent of the whole audience, English and French, wanted to see further programmes of the same kind. Clearly, this is the route not to bicultural harmony in Canada, but to mutual boredom and irritation.

29. English and French Canadian Reactions to a Bi-Lingual, Bi-Network Television Programme. (Ottawa, CBC Research Dept., 1964).



However, programmes addressed to a smaller audience may achieve a relatively much greater success. One of the boldest experiments ever carried out by the CBC was the televising of a complete play by Molière (Le Médecin Malgré Lui) in French by actors of the Théâtre du Nouveau Monde over the English network.<sup>30</sup> This was, understandably, not the most popular production of 1963. It was seen by an estimated 693,000 viewers, of whom about 525,000 or four-fifths were English speaking. During its 90 minutes, the programme lost about 40 per cent of its audience, but, interestingly enough, the degree of falling-off was almost exactly the same among viewers of each language group. About 5 per cent of English TV homes remained tuned in for the whole broadcast (in preference to NHL hockey or popular American programmes). The evidence seems to suggest that there is a relatively "highbrow" television audience in Canada, some of whose common interests transcend the language barrier. Three hundred thousand may be a small audience for a national television programme, but it is a huge one for an unfamiliar classic acted in a different language from that of the majority of viewers. The broadcast was most favourably received in Ottawa, where there is a large French minority, a concentration of well-educated civil servants conscious of the need for biculturalism, and alternative programmes for people to watch. It was least appreciated in centres such as Sudbury, Brandon and Saskatoon where these conditions do not apply, and viewers had no choice but to watch Molière or to switch off their sets. In these districts, the irritation of thousands may have out-weighed the approval of hundreds

30. See Molière in French on the CBC English-Language T.V. Network. (Ottawa, CBC Research Dept., 1964)





so far as bicultural good-will is concerned.

The CBC should obviously continue with occasional experiments of this kind, but it is clear from the evidence that the main contribution of CBC-TV. to biculturalism must be an indirect one. The audience should be subtly educated while it is being amused. Every effort should be made to use French Canadians as guest stars on variety shows or panel games; bilingual French Canadian commentators should frequently be invited to discuss national or international affairs which have nothing to do with the linguistic division of the country; the practice of broadcasting French-language NFB documentaries with dubbed-in English dialogue and commentary should be continued and extended. (In fact, skilful dubbing might make many a Radio-Canada feature a popular addition to the CBC roster of programmes); if any drama survives at all on future CBC schedules, plays which glance lightly at the bicultural situation might be favoured. But the CBC Research Department should test frequently and anxiously to make sure that all these measures are having the desired effect, and do not contribute accidentally to the development of philistine xenophobia.

Network radio has paradoxically been liberated by the desertion of its once huge audience to television and local commercial radio. Programme planners can afford now to appeal to minority tastes which could



never have been catered for in the old days; they can risk shocking their listeners and demanding from them a degree of intellectual effort and concentration. At its best, CBC radio is already one of the most enlightened and responsible instruments of English Canadian culture, something that cannot be said of CBC television. Such regular radio features as Preview Commentary, Trans-Canada Matinee, Today's Editorial, News magazine and Project '65 deal with the problems of biculturalism in a consistently constructive, liberal and imaginative way. If the radio service never fell below this level there would be no need to do more than praise it in this study. Recently, however, there has been a disturbing tendency towards competition with private stations for audience and advertising during peak listening hours. If the government makes it possible for the Corporation to abolish radio advertising completely (as the Board would like to do) the need to make this kind of concession will cease. After all, the audience for popular music and light chit-chat is already over-catered to.

Several years ago, the CBC operated an experimental Frequency Modulation radio network linking Montreal, Ottawa and Toronto. Most of the programme schedule was devoted to music, but there were news broadcasts and occasional talks and discussions. What made the network unique was that it was bilingual--the only major medium of communications in Canada to try to serve both communities concurrently. Unfortunately, the network was closed down for reasons of economy in 1962.



In 1964, the CBC resumed FM network broadcasting, but this time initiated separate English and French services, and seemed to aim (at any rate, on the English network) at an audience hardly distinguishable from that of the AM network. Yet, surely, here was a golden opportunity to provide an intellectual and cultural meeting place for creative and thoughtful Canadians of both languages. As we have seen, the popular cultures of English and French Canada are almost inevitably different and sometimes incompatible; but in the modern world high culture is increasingly cosmopolitan and indifferent to national boundaries. If French and English Canadians cannot share a common service at even the relatively highbrow level of the old FM network, then Confederation may turn out to have been a mistake after all. But the CBC should have another try at making a bilingual service work before writing off the whole experiment.





CHAPTER THREE

Conclusions

Throughout this paper, I have emphasized factors which limit the freedom of those who wish to use the media creatively. Utopian criticisms of the status quo are only too easy to make: it is a very different matter to suggest workable strategies for improvement. The conclusions which follow arise in a loose sort of way from the arguments of the preceding chapters. They are intended to suggest a framework within which those who control or direct the various media may, if they wish to (which is, unfortunately, not always the case), serve the cause of biculturalism.

1. Commercialism is the enemy of both the English and the French Canadian identity.

If Canada were a nation with a strong sense of its own unity in dualism, then the present domination of the media by the advertising industry would not be a serious threat to our national consciousness. As things are, however, there is a need for constant action at the federal level to counteract the inherent tendency of the North American market economy to monopolise and homogenise the media.

The report of the Fowler Committee on Broadcasting, which was published while this chapter was being written, severely criticizes the CBC (though without advancing much evidence) for failing Canada during the present crises of biculturalism. Many of the Report's other strictures on the Corporation seem to be only too justified, but this is cer-

The first of these is the fact that the  
 government has been unable to  
 maintain a stable currency. This has  
 led to a loss of confidence in the  
 government and a consequent  
 decline in the value of the  
 currency. The second is the fact  
 that the government has been  
 unable to maintain a stable  
 economy. This has led to a  
 decline in the standard of  
 living and a consequent  
 loss of confidence in the  
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 stable economy. This  
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 the standard of living  
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 government.

tainly an unkind cut from a committee who are adamant that the CBC should continue to compete for the same proportion of Canadian television advertising as it carries at present. Surely, programming for Canadian audiences is difficult enough--granted the geographical dispersion, the linguistic dualism and the undefended border--without having to compete commercially with domestic and foreign rivals into the bargain. The Fowler Committee seems never to have considered that part of the CBC's present confusion of purpose is undoubtedly due to the incompatibility of the Corporation's aims with the conditions under which it must raise much of its income.

2. The minority language group must be allotted a proportionately greater share of media resources.

Here, national unity takes precedence over the principle of strict economic equity. If all Canadians are to enjoy equal cultural advantages, then, in a non-Orwellian sense, the French Canadian community must be more equal than the English Canadian community when communication facilities are budgeted for. In particular, French Canadians should have access to the services of all the media in their own language whether they live in Verchères or Vancouver.

3. The media should be used to reach and cultivate a variety of minority audiences.

As a general rule, the influence of a communicator varies inversely



in proportion to the size of his audience. There is a place for programmes, periodicals or movies which are directed at the largest possible national or international audiences, but the most effective context in which to exercise persuasion is a relatively small group of similarly motivated and committed people (just how small is "small" will depend upon the medium). By sustaining and helping to create minority tastes, the media will serve the cause of the individual against the mass tendencies of our age; and the man who is conscious of his own individuality and respects that of others is likely to exhibit that degree of tolerant sympathy which is the minimum condition of a healthy bicultural state.

4. The media may best serve the cause of biculturalism indirectly rather than explicitly.

In certain parts of Canada the subject of biculturalism is regarded as tiresomely boring. There and elsewhere, attempts to discuss the problem directly will inevitably lead to the flipped page or the flicked switch. The overwhelming majority among audiences for documentaries and discussions on the subject will usually consist of those already converted to the cause.

This is no argument against such programmes, but it is an argument for a much more subtle and sophisticated approach to the problem, one in which Canadian biculturalism will be recognized, implied and celebrated in many small ways throughout the programme schedule--in much





the same manner as Negro Americans are now being introduced, without comment or fanfare, into television dramas and commercials. Experience has shown that a new synthesis unobtrusively suggested is much easier to achieve than victory in a heads-down frontal attack on bigotry and prejudice.

5. In the popular media, the touchstone of quality is authenticity, determined not by counting heads but by reference to reality.

So little is really known about the great audience of the media that value judgments based on its alleged preferences are notoriously unreliable. There is still no substitute for the honest craftsman's respect for his tools and his raw material, whether the product be shoes or television programmes. The Canadian popular media will best serve Canada not by cunningly concocting items that will "sell," but by reflecting the reality--even if only the surface reality--of life in this country. If this is faithfully attempted, the media will be serving the cause of enlightened Canadian nationalism. If it is not, then victory will go to that cynical materialism which is already the most formidable foe of our bicultural identity.



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FINAL REPORT

Author: Ramsay Cook

Title: Provincial Autonomy  
Minority Rights and the  
Compact Theory

Div. II

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PROVINCIAL AUTONOMY, MINORITY RIGHTS  
AND THE COMPACT THEORY

A Report Prepared for the  
Royal Commission on Bilingualism and Biculturalism  
Research Division

by

Ramsay Cook

Associate Professor of History

University of Toronto

September 1, 1965.

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## Chapter I

### INTRODUCTION

"The enactment of the British North America Act," the Report of the Royal Commission on Dominion-Provincial Relations noted in 1940, "did not of itself assure the balance between national loyalties and interests and provincial loyalties and interests which an effective federal system requires."<sup>1</sup> In the course of the years immediately following 1867, particularly during the first two decades, there was an almost constant clash of loyalties and interests between the federal and provincial governments. That clash took the form of a great constitutional debate in which the nature and objectives of the new constitution were the subject of discussion. In that debate certain intellectual weapons were forged which gradually became the clichés of Canadian constitutional discussion. "Centralization" and "decentralization," the "national interest" and "provincial rights": these were the great issues of the first twenty years of the constitutional and political history of the new nation. It was from this debate that one of the most controversial theories of the Canadian constitution emerged: the theory that the constitution was founded upon a compact entered into by the provinces who agreed to establish a federal union.

Perhaps the greatest value of the compact theory was its imprecision. The questions which it raised were more numerous than those which it answered. Did the compact include only the

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1. Report of the Royal Commission on Dominion-Provincial Relations (Ottawa, 1940, Book 1, 47.





original three provinces, or were the later joiners also parties? Did both Quebec and Ontario agree to the compact or had they participated as a single unit, since that was their constitutional status under the 1841 Act of Union? Was it a legal contract sanctioned by the Parliament of Great Britain (no one ever dared suggest that it was sanctioned by the people or even their representatives), or was it rather a moral compact sanctioned by natural and divine law? These and many other questions have been raised about the concept of compact. They have never been answered finally, at least in the sense that the theory has been proven or exploded to the satisfaction of all. And it would seem that the very durability of the term is at least partly explained by its imprecision.

That the compact theory became a doctrine for all seasons may be illustrated in a number of ways. For example, the term "compact" was used not merely by Mowat, Mercier and Ferguson, but also by Tupper, Laurier, Borden, Meighen and King. Moreover the concept was extremely malleable. After the war for provincial autonomy, or at least one engagement in the war, was concluded about 1890, a new struggle opened. That was the conflict over the rights of the Roman Catholic and French-speaking minorities in the provinces where the majority was English-speaking and Protestant. Out of this struggle a new concept of compact was born: the concept of Confederation as a compact between two cultures, French and English. But even in the discussion of the relations between these two cultures the compact theory could be made to serve different masters. Henri Bourassa believed



that the cultural compact of confederation guaranteed the equality of the two cultures throughout the Dominion. D<sup>r</sup>Alton McCarthy insisted that the compact of Confederation explicitly limited the use of the French language at the federal Parliament and the Province of Quebec.

As is often the case in constitutional debate it was possible for both sides, or rather all sides, to cite scripture in supporting their various cases. A careful search of the utterances of the Fathers of Confederation and the British North America Act could produce scraps of evidence to give some credence to nearly every argument. The Fathers of Confederation, like their successors in the debate over the nature of the constitution, were, as has so often been remarked, practical lawyers and politicians rather than political philosophers or professors of constitutional law. The result was that in discussing the structure that they had built they were more interested in its practicability and acceptability than in the exact philosophical or theoretical meaning of the terms they had used in the political debate which preceded its acceptance. Their speeches have therefore become a kind of scriptural grab-bag of proof-texts for subsequent sectarian squabbles.

A further complication worth noting at the outset is that the party labels and sides in the debate over the compact theory alter and change with time and circumstance. If one had to select a father for the theory of compact in its provincialist version, the title would doubtless be awarded to Oliver Mowat, Liberal Premier of Ontario, 1872-96. The leading opponent of the Mowatt viewpoint, was of course, Sir John A. Macdonald, the





Conservative Prime Minister of Canada during much of the same period. Yet in the 1930's when the same debate raged again, the most thorough exposition of the compact theory was issued under the name of G. Howard Ferguson, Conservative Premier of Ontario. Norman McLeod Rogers, political scientist and later Liberal cabinet minister, replied to the Ferguson thesis, providing what has become the standard refutation of the compact theory.<sup>2</sup>

There is yet another complication. Professor Rogers, while totally rejecting the theory of the compact of provinces, appears nevertheless to have accepted some of the implications of the theory of the compact of cultures. In an article which is less well-known than his famous assault on the provincial compact theory, Roger wrote:

The theory which regards the constitution as in the nature of a treaty or compact is equally untenable unless an entirely fictitious character is given to those provinces which have been created by an Act of the Dominion Parliament out of the Northwest Territories. There is, however, one aspect of treaty engagements which must be given serious consideration in any procedure which may later be adopted for the amendment of the Canadian constitution. The racial and religious minority which has shared with pioneers of Anglo-Saxon stock the task of building a Canadian nation, holds a position within the Dominion which is not derived from the grace or discretion of the majority, but rests upon the capitulations

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2. Senate of Canada Session of 1939 Report Pursuant to the Resolution of the Senate to the Honourable Speaker by the Parliamentary Counsel Relating to the Enactment of the British North America Act (Ottawa 1961)  
Annex 4, 134-8 (hereafter O'Connor Report).





of Montreal and Quebec and upon the terms and  
implications of the Treaty of Paris. Great Britain  
having been a party to this treaty, the rights and  
privileges granted have been confirmed by the several  
Constitutional Acts which the British Parliament has  
enacted for the Government of its British North American  
Provinces. In the protection of these rights, which are  
capable of specific designation as clauses of the British  
North America Act, there is every reason for a requirement  
of unanimous provincial consent as a condition of alteration.<sup>3</sup>

Finally, it may be remarked that while the debate over the  
nature of the constitution has never been a simple French-versus-  
English, Quebec-versus-Ottawa dispute, French-speaking Canadians  
have doubtless been the most consistent exponents of the compact  
theory in both its provincial and cultural variations. As one  
writer has remarked in speaking of the French-Canadian's attitude  
to "la loi de 1867": "Il la considère surtout comme une 'pacte'  
entre chacune des provinces canadiennes. Plus particulièrement,  
comme une pacte entre les 'Anglais' et les 'Français' du Canada.  
Plus encore, comme une pacte entre Protestants et Catholiques,  
aux termes duquels tous les droits politiques accordés aux  
Canadiens français et catholiques du Québec seraient automatique-  
ment garantis à tous les Catholiques dans l'ensemble du pays."<sup>4</sup>  
Indeed the view of Confederation as a compact of provinces has  
achieved something of an official status in Quebec because it has

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3. Norman McL. Rogers, "Mr. Ferguson and the Constitution,"  
Canadian Forum, XI, no. 122, (November 1930), 49.

4. Jean-C. Falardeau, "Les Canadiens français et leur  
idéologie," in Mason Wade, La Dualité Canadienne  
(Toronto et Québec 1960) 25.



been enacted as the preamble of a provincial statute.<sup>5</sup> The Report of the Tremblay Commission, in 1956, represents a detailed exposition of the compact theory in both its variations.<sup>6</sup>

Nevertheless, it was also a French-Canadian Prime Minister Mr. St. Laurent, who rejected most forcefully the implications of the compact theory when he told the House of Commons in 1949 that the Canadian constitution could be modified without the consent of the provinces. He noted:

The leader of the Opposition (Mr. Drew) says that whenever there has to be any kind of amendment whatsoever to any part of the constitution there should be consultation with the provinces. That is an opinion that is very frequently voiced, but it is one which we cannot accept. It would imply that the British North America Act was a contract, and that every clause thereof has the effect of a contract between the Canada that did not then exist and the provinces that did not then exist, but which would affect Canada as it now exists and as it came into being when the act was proclaimed, and the provinces which came into being at that time.

With that theory we are in diametric disagreement. We think the British North America Act is a statute which had the effect of distributing the sovereign powers of this young and growing nation between the central authority as to one part of them and the provincial

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5. Statutes of Quebec, 2-3 Elizabeth II, c. 17.

6. Report of the Royal Commission of Inquiry on Constitutional Problems (Quebec, 1956), Volume I.





authorities as to the other. We think that the central authority has no right whatsoever to deal with anything which was allocated to the provincial authorities; and on the other hand, that the provincial authorities, legislatures and governments, in respect of matters which by the constitution were allocated to the federal parliament and the federal government, do not represent the people who inhabit their provinces. With respect to those matters allocated to the federal parliament and the federal government, the people inhabiting the provinces are represented by the members they elect to sit and vote for them in this House of Commons.

This is not only our theory. That has been the theory followed in practise since the earliest days of Confederation. Not less than ten times from 1871 to 1949, amendments to the constitution have been proposed and made without consultation with the provincial governments or the members of the provincial legislatures. This has been the practise, and in the responsible position we occupy we feel that we have no right to recognize that the provincial legislatures or provincial governments have any control whatsoever over those matters of public interest and national sovereignty allocated to the federal authority.<sup>7</sup>

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7. Canada, House of Commons Debates, 1949, 196.





It was also Mr. St. Laurent who was reported to have expressed the view that "Il importe très peu que l'Acte de l'Amérique britannique du Nord soit un contrat ou simple loi, pourvu que le gouvernement fédéral respecte les pouvoirs et les droits des provinces, et que les provinces respectent les droits et les pouvoirs fédéraux."<sup>8</sup> From these remarks it would obviously be dangerous to attempt to suggest that the theory of compact is the product of any particular ethnic group or political party. The history of the idea clearly confirms this conclusion.

The fact is that the doctrine of "compact" is as complex and elastic as any individual proponent chooses to make it. Therefore, while the theory could be analysed as an abstract legal concept or as a postulate of moral philosophy, I have concluded that it would be more fruitful to examine it as an evolving term of political controversy. I have chosen this approach in the belief that "legal argument is of little avail in changing opinions, and proofs that the B.N.A. Act is or is not founded on a compact or treaty do not go to the real issue, which is one of power rather than of law."<sup>9</sup> In other words the object of this study has not been to prove or to disprove the validity of the compact theory so much as it has been to indicate and explain what men and governments have believed about it and to suggest, as far as possible, why they believed what they did.

An American scholar, discussing the "state rights" question in the history of the United States, concluded many years ago that:

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8. La Presse, 15 octobre 1949

9. F.R. Scott, "Areas of Conflict in the Field of Public Law and Policy," in Wade, op. cit., 89.



There can be no doubt that state rights agitation has played a large part in American history; but it is equally clear that the controversy must always be studied in its relation to time and circumstances. The state rights doctrine has never had any real vitality independent of underlying conditions of vast social, economic or political significance. The group advocating state rights at any period have sought its shelter in much the same spirit that a western pioneer seeks his storm cellar when a tornado is raging. The doctrine has served as a species of protective coloration against the threatening onslaughts of a powerful foe. As a well-known American historian has tersely said, "Scratch a Wisconsin farmer and you find a Georgia plante."<sup>10</sup>

This contention, with necessary Canadian emendations, could very well be taken as the conclusion reached in this study, with one major exception. It is true that a Mowat, a Pattullo, a Ferguson or an Aberhart could defend provincial rights as loudly as a Mercier, a Taschereau or a Duplessis. It is even true that a Nova Scotia politician in 1886 or a Manitoba agrarian politician in 1925, could express separatist sentiments similar to those voiced by some French Canadians in the 1930's or the 1960's. But a question still remains to be answered: "If you scratch a French-Canadian farmer or journalist, do you find an English-Canadian lumberjack or businessman? The answer to that question may be found in the fact that the study

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10. A.M. Schelesinger, "The State Rights Fetish," in New Viewpoints in American History (New York, 1922), 243.





of the "compact" theory in Canada cannot be limited to our variation of the "state rights" controversy. It has also necessitated an examination of the difficult question of "minority rights," which is not only different from "provincial rights" but is often in conflict with it.

Since the study of the compact theory is a subject of venerable age, it has not appeared necessary to enter into and repeat again all its well-known aspects. The arguments for and against the theory have been explored many times, most notably by Professor Rogers and Father Arès.<sup>11</sup> The crucial question of The Disallowance and Reservation of Provincial Legislation has been extensively treated by G.V. La Forest,<sup>12</sup> while J.T. Saywell's The Office of the Lieutenant-Governor<sup>13</sup> carefully examines the role that this office has played in dominion-provincial relations. J.A. Maxwell in his Federal Subsidies to Provincial Governments in Canada<sup>14</sup> naturally is concerned with the most material and important aspect of the problem of Canadian federalism. In his Constitutional Amendment in Canada<sup>15</sup> Paul-Gérin Lajoie has presented a detailed account of the highly technical question of changing the constitution. Many, though not all, of the politicians in the 1867-1921 period have been subjected to detailed consideration in published works. Finally, a general outline of the whole question may be found in two Royal Commissions

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11. Norman McLeod Rogers, "The Compact Theory of Confederation," Proceedings of the Canadian Political Science Association (1931), 205-30; Richard Arès, La Confédération: Pacte ou Loi? (Montréal, n.d.).

12. Department of Justice, 1955.

13. Toronto 1957.

14. Cambridge, Mass., 1937.

15. Toronto 1950.





findings: The Report of the Royal Commission on Dominion-Provincial Relations<sup>16</sup> and the Report of the Royal Commission of Inquiry on Constitutional Problems.<sup>17</sup> Valuable documentation is published in the O'Connor Report and in W.E. Hodgins' volumes Correspondence, Reports of the Minister of Justice and Orders in Council on the subject of Provincial Legislation, 1867-95.<sup>18</sup>

What I have attempted to do, therefore, in addition to summarizing much familiar information, is to add some new documentation and particularly to relate the questions of provincial autonomy, minority rights and the compact theory to political thought and action. It is hoped that through this approach a familiar theme may be viewed in a slightly new fashion.

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16. Ottawa, 1940.

17. Quebec, 1956.

18. Ottawa, 1896.



## Chapter II

### THE BEGINNINGS OF THE FEDERAL-PROVINCIAL DISPUTE

Though it was not always so, it now seems unnecessary to offer an elaborate proof of the contention that the Fathers of Confederation intended to establish a highly centralized federal system in which the central government would exercise a well-understood predominance. For more than a generation scholars and publicists have devoted themselves to the task of examining every available document, public and private, in an effort to establish beyond all doubt the views of the Fathers of Confederation.<sup>1</sup> Today, both French and English-speaking scholars appear to agree that the spirit of 1867 was the spirit of centralization.<sup>2</sup> Therefore it would be a case of carrying coals to Newcastle to rehearse the arguments in detail.

The objective of the Confederation scheme was clearly defined by its chief architect as early as 1861. Macdonald told the Canadian Assembly:

In speaking of a confederation, I must not be understood as alluding to it in the sense of the one on the other side of the line, for that has not been successful. When I say this I do not say so from any feeling of satisfaction at such a result but while I thus sympathize with them I must say let it be a warning to ourselves that we do not split on the same rock on which they have split.

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1. See F.R. Scott, "Centralization and Decentralization in Canadian Federalism," Canadian Bar Review XXIX, 10 (December 1951), especially footnote 44, 1108-9.
  2. Jean-Charles Bonenfant, "L'Esprit de 1867," Revue d'Histoire de l'Amérique française, XVII, I (juin 1963).





The fatal error which they have committed - it was, perhaps, unavoidable from the state of the colonies at the time of the revolution - was in making each state a distinct sovereignty, in giving to each a distinct sovereign power except in those instances where they were specially reserved by the constitution and conferred upon the general government. The true principle of a confederation lies in giving to the general Government all the principles and powers of sovereignty, and in the provision that the subordinate and individual states should have no powers but those expressly bestowed upon them.<sup>3</sup>

The debate on the Confederation proposals in the Canadian Assembly in 1865 is full of similar expressions by both French and English-Canadian speakers. For the supporters of the scheme, its great strength lay in its claim to have solved the problem of "state rights," which was believed to have been the downfall of the American constitutional system. For the critics of the scheme the greatest fault in the plan was that it gave too much power to the central authority, thus offering a legislative union in disguise. J.B.E. Dorion, who worked from a theory of federalism contrary to Macdonald's, put the critic's case this way:

I am opposed to the scheme of Confederation because the first resolution is nonsense and repugnant to truth; it is not a Federal union which is offered to us, but a Legislative union in disguise. Federalism is completely

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3. Sir Joseph Pope, Memoirs of Sir John Macdonald (Toronto, 1930), 242-3.





eliminated from this scheme, which centres everything in the General Government. Federalism means the union of certain states, which retain their full sovereignty in everything that immediately concerns them, but submitting to the General Government questions of peace, of war, of foreign relations, foreign trade, customs and postal service. Is that what is proposed to us? Not at all. In the scheme we are now examining, all is strength and power in the Federal Government; all is weakness, insignificance, annihilation in the Local Government.<sup>4</sup>

What was stated in the Assembly was repeated by the publicists in their examinations of the union proposals. The bleu journalist, Joseph Cauchon, could argue that security for all lay in a union as close to a legislative one as possible. "To admit State sovereignty and the privilege of delegating power as the basis of a general constitution", he wrote "would be to assert the right of secession; it would be to introduce into the system of a germ of dissolution which would, sooner or later, produce fatal consequences."<sup>5</sup> To this claim an anonymous rouge pamphleteer replied, "La prétendue Confédération que l'on vient de nous imposer n'est-elle pas identiquement le projet de lord Durham: une union législative?"<sup>6</sup> Obviously no one was in doubt

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4. Parliamentary Debates on the Subject of the Confederation of the British North American Provinces (Quebec, 1866) 858 (hereafter Confederation Debates).
  5. Joseph Cauchon, The Union of the Provinces, Translated by G.H. Macauley (Quebec 1865), 50.
  6. La Confédération Couronnement de Dix Ans de Mauvaise Administration (Montréal, 1867), 8.



about the nature of the new government, though there were sharp differences about the virtues of the scheme.

Still, the new union was not, however much Macdonald may have wished it, a legislative union. It could not be. As Cartier reportedly informed the Quebec Conference: "We thought that a federation scheme was the best because these provinces are peopled by different nations and by peoples of different religions."<sup>7</sup> Therefore, while the paramountcy of the central government was to be recognized in matters touching the affairs of the entire country, local control over local concerns was also affirmed. Canada East and Canada West were to have their local governments restored to them, while the maritime provinces were not asked to integrate themselves completely into the new union.

Again, it need hardly be emphasized, the local governments were to be strictly limited to matters of local concern. Their powers and, perhaps more important, their financial resources were to be closely defined, and the residual powers left to the federal government. Perhaps nothing more obviously underlined the subordinate role of the provinces than those sections of the constitution which defined the appointment and position of the federal officer who was to act as Lieutenant-Governor of each province, and the sections which gave the federal government the authority to disallow provincial legislation. As has been frequently pointed out, the constitution-makers of 1867 took as their pattern not the American federal system, but rather the British Empire in which Ottawa replaced London and the provinces assumed the role of colonies.

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7. A.G. Doughty, "Notes on the Quebec Conference, 1864," Canadian Historical Review, I, 1 (March 1920), 28.





But despite every effort to ensure the predominance of the federal authority, the fact remained that the system was federal and where there is a division of powers, there can be a dispute about the nature of the division. Indeed the Fathers themselves did not manage to conclude their pleas in favour of the new system without the use of some language that was later to be employed by the proponents of provincial rights. In attempting to convince the Canadian Assembly of the need to accept the Quebec Resolutions in their entirety and unchanged, Macdonald himself described the agreement as a "treaty." "If any important changes are made," he maintained, "every one of the colonies will feel itself absolved from the implied obligations to deal with it as a Treaty, each province will feel at liberty to amend it ad libitum so to suit its own views and interests."<sup>8</sup> Cartier, in turn, spoke of the "treaty" and of the "sworn engagement" of the parties.<sup>9</sup> These arguments were again repeated, and made even more explicit in the debates which took place in the British Parliament at the time of the passage of the British North America Act. In the Upper House the Colonial Secretary, Lord Carnarvon, remarked: "The Quebec Resolutions, with some slight changes, form the basis of the measure that I now have the honour to submit to Parliament. To those resolutions all the British Provinces in North America were, as I have said, consenting parties, and the measure founded upon them must be accepted as a treaty of Union." In the House of Commons, Mr. Adderley, the Under-Secretary of State expressed

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8. Confederation Debates, 31.

9. Ibid., 714.





similar sentiments, though with an important variation of language. He said:

The House may ask what occasion there may be for our interfering in a question of this description. It will however, I think be manifest, upon reflection, that, as the arrangement is a matter of mutual concession on the part of the Provinces, there must be some external authority to give a sanction to the compact into which they have entered. If, again, federation has in this case specially been a matter of most delicate treaty and compact between the provinces - if it has been a matter of mutual concession and compromise - it is clearly necessary that there should be a third party ab extra to give sanction to the treaty made between them. Such seems to me to be the office we have to perform in regard to this Bill.<sup>10</sup>

Thus, whatever arguments could be brought against the "compact" theory in later years, the supporters of that doctrine were always able to find some evidence for their position in the words of the very people most responsible for the drawing up of the British North America Act.

Even without this language, of course, there would undoubtedly have been a dispute about the nature of the division of powers in the new constitution. As the Report of the Rowell-Sirois Commission observed, "No amount of care in phrasing the division of powers in a federal scheme will prevent difficulty when the division comes to be applied to the variety and

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10. The Carnarvon and Adderley statements may be found in the O'Connor Report, Annex 4, 149.



complexity of social relationships."<sup>11</sup> The Canadian federal system is a stellar example of this rule. Its unique structure, and peculiar division of powers, has continued to baffle students of federalism, as Professor Wheare's often cited remark illustrates: "...it is hard to know wheter we should call it a federal constitution with considerable unitary modifications, or a unitary constitution with considerable federal modification."<sup>12</sup> For the political scientist, with his desire to tidy up history by applying neat definitions, Canada is a "quasi-federal state." But to the public men involved in making the new system work in the years immediately after 1867, it was not so much a question of abstract definition as of real political power.

Much has been said about the machinery of centralization established by the British North America Act. Less attention has been paid to the energy that determined the direction in which the machinery would move: the political parties. It is possible, though unlikely, that the new constitution would have operated to the complete satisfaction of everyone, if the same political party had held office at Ottawa and in each of the provinces. But that is speculation. What is a fact is that Macdonald believed that in the working out of the new system politics was nearly as important as the constitution itself, and that the policies of the central government would be more readily adopted if his friends held power in the provinces.

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11. Report of the Royal Commission on Dominion-Provincial Relations, Book 1, 31.

12. K.C. Wheare, Federal Government (London, 1963) 4th edition 19.





For that reason he sought to maintain a close relationship between federal and provincial parties through the use of the dual mandate, which permitted politicians to sit in both federal and local legislatures, through the establishment of a federally determined franchise, and through the enactment of legislation and the exercise of federal powers in a manner which would assist his political supporters. Macdonald was certainly not misled in his belief, for the new confederation was still very young when his political opponents began to attack it, or at least to attack Macdonald's interpretation of it. So too, they attacked the basis of Macdonald's political influence: the dual mandate, the federal franchise, and the various acts and policies of the federal government which were damaging to their political prospects. Before long, Macdonald's opponents were entrenched in the provincial capitals, developing a theory of the constitution contrary to that held by the federal Conservative party, and expressed in terms of "provincial rights" and the compact of Confederation. In the first decade after 1867 political lines became clearly drawn, and much of the debate centred on questions of federal supremacy and provincial rights.

Macdonald never disguised his attitude toward the provinces: they were to be treated not as independent sovereignties, but rather as administrative bodies similar in status to municipal councils. Nor was Macdonald unaware that the provinces might find this minor status unacceptable; but he was prepared to fight for his viewpoint. As he told a Member of Parliament from Quebec in 1868:





I fully concur with you as to the apprehension that a conflict may, ere long, arise between the Dominion and the "States Rights" people. We must meet it, however, as best we may. By a firm patient course, I think the Dominion must win in the long run. The powers of the General Government are so much greater than those of the United States, that the central power must win in the long run. My own opinion is that the General Government or Parliament should pay no more regard to the status or position of the Local Governments than they would to the prospects of the ruling party in the corporation of Quebec or Montreal.<sup>13</sup>

By this date Macdonald had already faced and surmounted one serious provincial revolt. The first post-Confederation election in Nova Scotia had returned a local assembly dominated by the anti-Confederation party, and all but one of the federal Members of Parliament from Nova Scotia shared the same view. In February 1868 the Nova Scotia Assembly unanimously accepted a resolution stating the province's grievances and calling for the repeal of the union. In effect this resolution was based on the assumption that what was wrong with Confederation was that it was not and never had been a "compact" so far as Nova Scotia was concerned, for the union had been imposed upon the province. The most important section of the Resolution declared:

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13. Macdonald to Brown Chamberlin, October 26, 1869, in Sir Joseph Pope, The Correspondence of Sir John A. Macdonald (Toronto, 1921), 75.



That there being no Statute of the Provincial Legislature confirming or ratifying the British North America Act, and it never having been consented to nor authorized by the people, nor the consent of the Province in any other manner testified, the preamble of the Act, reciting that this Province has expressed a desire to be Confederated with Canada and New Brunswick is untrue, and when Your Majesty was led to believe that this Province had expressed such a desire, a fraud and imposition were practised on Your Majesty.

The resolution continued by noting that an election had now been held, that an anti-Confederation majority had been returned, and that therefore the British North America Act was declared to be "unconstitutional and in no manner binding on" the people of Nova Scotia.<sup>14</sup>

The resolution, accompanied by a petition, was sent to the Colonial Office in due course. It received a cold reception in London for the issue was judged to be a question of purely local concern. The solution to the problem was reached through direct negotiations between the Macdonald Government and the leaders of the separatist party in Nova Scotia. In brief, the outcome provided better financial terms for Nova Scotia and a position in the federal cabinet for Joseph Howe, the anti-Confederation leader.<sup>15</sup>

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14. Canada, Sessional Papers, 1867-68, Volume IX no. 66,3.

15. D.G. Creighton, John A. Macdonald: The Old Chieftain. (Toronto, 1955), 1-33.





The interesting point, however, in the context of the discussion of the nature of the constitution is not the fact that Macdonald could rather easily restore Nova Scotia's loyalty, at least temporarily, but rather the light that the incident casts upon the compact theory. Nova Scotia, in effect, had denied that it had ever been party to a compact, a view which the events leading up to Confederation in Nova Scotia support. By denying that it had been consulted, Nova Scotia was able to claim, and obtain, better financial terms. But that very action brought a response from another province, Ontario, which was perhaps the first statement of the provincial rights case with its underpinnings in the compact theory. Contending that the federal Government had overstepped its powers in unilaterally altering the financial terms agreed upon in 1867, the Ontario Legislature passed a resolution praying that legislation be passed by the Imperial Parliament "for the purpose of removing any colour for the assumption by the Parliament of Canada of the power to disturb the financial relations established by the British North America Act (1867), as between Canada and the several provinces."<sup>16</sup> A similar view was expressed by the Liberal Opposition in the federal Parliament, and in fact the ~~view~~ was accepted in a Parliamentary Resolution which passed in 1870.<sup>17</sup>

The implications of this debate are clear. The federal government had unilaterally amended the constitution in the matter of financial terms. Ontario, governed in 1869 by a

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16. Journals of the Legislative Assembly of the Province of Ontario, 1869, 54-5.

17. Canada, House of Commons Journals, 1870, 126-7





Liberal-Conservative government, had protested the action on the grounds that such an alteration required the sanction of the provinces. In 1870 Macdonald allowed a similar resolution to pass the federal House of Commons because he wished to forestall further provincial claims on the federal treasury. In fact, of course, like every subsequent statement on the finality of financial terms, this was only final until new political pressures appeared to force another round of better terms.<sup>18</sup>

The main conclusion to be drawn from this affair is that "provincial rights", as Macdonald had anticipated, had been born with the new constitution. The division of powers in the British North America Act was a recognition that there was a division of loyalties among the people federated. As long as that division of loyalties remained, there would be appeals to local loyalties as well as to national loyalties, and these appeals would often take the form of disputes over the precise meaning of the constitution.

The continuing division of loyalties was evident not only in Nova Scotia, where it took a radical if short-lived form. It was evident also in Ontario and Quebec though it was expressed in a more conventional manner and, at least during the first decade of Confederation, was never as unanimously expressed as in Nova Scotia. There can be no doubt that for both Ontario and Quebec, Confederation was important as much for what it divided as for what it united.

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18. J.A. Maxwell, Federal Subsidies to Provincial Governments in Canada (Cambridge, Mass., 1937).

[The text in this block is extremely faint and illegible. It appears to be a single paragraph of text, possibly a list or a series of short sentences, but the characters are too light to transcribe accurately.]

Unfortunately, while the reasons for Quebec's anxiety to achieve a large measure of control over matters connected with French-Canadian survival are always noted, it is often forgotten that Canada West also expressed a powerful desire for control over her own affairs. Indeed, it is too often forgotten that Canada West was much more anxious to end the unitary regime of 1841 than was the eastern section of the United Canadas. There is no need to repeat again the story of the bitter complaints of George Brown, the Toronto Globe, and the Reform party about the fashion in which Canada West's ambitions were constantly frustrated in the union. Whether it was expressed in terms of the injustice of equal representation for each section at a time when Canada West was rapidly outnumbering its partner, or whether it was the loud outcry against "French domination," the demand of large sections of opinion in Canada West for a new form of government which would provide local self-government was irresistible by 1865. There was also, of course, a section of opinion in Canada West that was anxious for a completely organic, legislative union; Macdonald represented that view. But it would be a serious error to ignore the Ontario "rights" sentiment even at the time of the Confederation debates. After the enactment of the union, it is impossible to ignore this sentiment since it rapidly becomes the dominant theme in Ontario politics.

The vehicle of the Ontario rights movement after Confederation, as before, was the Reform party of George Brown, Edward Blake and Oliver Mowat. The first resolution agreed upon by the Reform Party of Ontario in June 1867 made plain that group's interpretation of the union that was about to be officially proclaimed





Resolved - That this Convention records its high gratification that the long and earnest contest of the Reform Party for the great principles of Representation by Population, and local control over local affairs, has at last been crowned with triumphant success.<sup>19</sup>

And from that date onward the Ontario Reform party took as its rallying cry the defence of Ontario's right to "local control over local affairs," a phrase of enough vagueness to ensure a bitter battle once it became mixed with party politics.

That it should become mixed with party politics was perhaps inevitable, given the facts of political life in Canada at Confederation. In the first place, though it travelled under the name of coalition, the Government of John Sandfield Macdonald, which held office in Ontario from 1867 to 1871, was in reality the political ally of the federal Liberal-Conservative administration. That this was so fully in keeping with Sir John A. Macdonald's view that regimes of a similar political stripe at the federal and provincial levels would be useful at least "until the new constitution shall have stiffened in the mould."<sup>20</sup> But this also meant that the local government was constantly open to the charge of being nothing more than the tool of Ottawa. Secondly, as long as the dual representation system existed, some members took the opportunity to sit in both houses.

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19. Proceedings of the Reform Convention Held at Toronto on the 27 and 28 of June 1867 (Toronto, 1867) 20.

20. Macdonald to Brown Chamberlin, October 26, 1868, in Pope, Correspondence of Macdonald, 75.





The natural result of this situation was that the political struggles of Ottawa were reproduced in the local legislatures and vice versa. Thus the criticisms that Blake and Mackenzie directed at the federal administration in Ottawa were repeated on the floor of the Ontario Legislature in Toronto. While the attack was readily repulsed in Ottawa, it quickly gathered momentum at Toronto.

At the end of 1871 Edward Blake was called upon to form the first Reform government in Ontario. His opening statement of policy was both a summary of his party's attitude during the preceding years and a set of guide lines for the future. He declared:

The first point upon which I desire to state the policy of this administration is with reference to what may be called the external relations of the Province. My friends and myself have for the past four years complained that the late administration was formed upon the principle and the understanding that it and the Government of the Dominion should work together - play into one another's hands - that they should be allies. My friends and myself thought, and my administration now thinks, that such an arrangement is injurious to the well-being of Confederation, calculated to create difficulties which might otherwise be avoided; and that there should exist no other attitude, on the part of the Provincial Government towards



the Government of the Dominion than one of neutrality; that each Government should be absolutely independent of the other in the management of its own affairs. As citizens of the Province of Ontario we are called upon to frame our own policy with reference to our Provincial rights and interests, and to conduct our own affairs; and we deprecate, nay more, we protest most strongly against any interference, we equally protest against the proposition that the Provincial Government ought to interfere as a Government with the affairs of Canada or any of the other provinces.<sup>21</sup>

Blake here laid down the principle which was to guide the Reform party's battles with Macdonald, the Ontario government's battles with Ottawa, over the next twenty-five years. While the abolition of the dual mandate in 1872 forced Blake to give up the Ontario premiership in favour of his federal seat, his views as well as his position were soon taken over by Oliver Mowat. Indeed Mowat more than took over Blake's views; he extended them on all fronts. It is clear from these early years, as it was to become increasingly obvious in subsequent ones, that the political fortunes and ambitions of individuals and parties can never be successfully separated from abstract arguments about provincial rights.

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21. The Globe, December 23, 1871.





Quebec politicians had been deeply attached to the Union of 1841 in its later years, largely because the principle of equal representation had given them a certain sense of security. But by the mid-1860's it was recognized that the union could not long be preserved unchanged in the face of political instability, economic difficulties, and external pressures. The quest therefore was to devise a new system which would remove the difficulties while at the same time offering continued security for the French-Canadian way of life. Confederation, in the view of its supporters, provided exactly that. The defenders of the scheme emphasized that French Canadians were once more being given a government of their own, that Quebec would again be the capital of French Canada. Once more the theme of division was underlined. But in Quebec there was also a powerful group that opposed Confederation outright because, it was believed, the division was more apparent than real. After the scheme had been adopted it fell to this group to take up the cry of provincial rights. It was, then, the former opponents of Confederation, the rouges, that formed the core of the provincial rights party in Quebec. In giving up their total opposition to Confederation, the rouges did not forego their belief that unless the autonomy of the provinces became the fundamental principle of French Canadians, the worst fears about the future would be fulfilled. Le Canadien put the case very frankly in 1868 when it stated:





Plus que jamais nous voyons que le régime actuel n'est rien d'autre chose qu'une union législative déguisée. Le pouvoir local est sans force, sans moyens, et tous les jours le pouvoir fédéral enlève une pierre de l'édifice qu'il a construit temporairement. Si la Nouvelle-Ecosse a raison de craindre pour son autonomie, que doit espérer le bas-Canada?<sup>22</sup>

It was not, however, only the rouges in Quebec who had opposed Confederation. There was a second group, many of whom had Conservative origins, who had united to publish the newspaper Union nationale as an organ of opposition to Confederation. This group was made up of young men who were nationalistes before they were party members, but at the same time they were unwilling to associate themselves too closely with the rouges who were suspected of anti-clericalism and annexationism.<sup>23</sup> In the years after Confederation had been adopted, many members of this group retained their earlier suspicions of the Confederation scheme, and therefore took up the cause of provincial rights. What is most interesting about this group's viewpoint is that it tended to identify French-Canadian "national" rights with provincial rights. This was an opinion later expressed by numerous writers in the influential journal L'Opinion Publique to which several of the earlier Union Nationale writers contributed. One of the clearest statements of this viewpoint came from the journalist Oscar Dunn, who in the 1870's never tired of advocating the formation of a

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22. Le Canadien 11 août 1868

23. L.-O. David, L'Union des Deux Canadas (Montréal 1898) 212.



"parti national" to defend French Canada's interests in Confederation. In 1871 he wrote:

C'est pourtant à Québec surtout que nous avons besoin de talents et d'esprits solides, car c'est là que se prépare l'avenir des Canadiens-français. De la sage administration de nos affaires locales et du fonctionnement parfait du gouvernement provincial dépend l'échec des tentatives qui se feront sans doute plus tard dans le but de transformer la confédération en une union législative.<sup>24</sup>

And it was a future Conservative Premier of Quebec, J.A. Mousseau, who had declared in the pages of the same journal in 1871 that "C'est à Québec, à Québec surtout, que se peuvent assurer le maintien, la force et l'avenir de l'autonomie nationale."<sup>25</sup>

In the election of 1871, one of the opponents of Confederation, Louis Jetté, defeated Sir George Cartier. While that defeat was only a straw in the wind, it was an important indication of future developments. For the next fifteen years the cry of provincial autonomy was evidently not a particularly effective one in Quebec. Indeed the condition of bleu à Ottawa, bleu à Québec, was apparently far less dangerous politically in Quebec than in Ontario. The bleus held power in Quebec continuously from 1867 to 1886 with the brief exception of the Letellier minister in 1878-9. And that tumultuous year, as we shall see, is perhaps the exception that proves the rule. There were, of course, a multiplicity of

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24. L'Opinion Publique II-30. (juillet 27, 1871).

25. Ibid., II, 15 (avril 13, 1871).





reasons for Conservative strength in Quebec: the bad reputation of the rouges in clerical circles, the effectiveness of Conservative organization, the disunited state of the opposition groups, and so on. But the fact remains that until an issue arose that could unite sentiments of "national" rights with those of provincial rights, the close alliance of Quebec and Ottawa apparently worked to the satisfaction of French Canadians. And it is no accident that Honoré Mercier, the politician who succeeded in moulding "nationalists" and "provincialists" into a single movement, was a Conservative who had left his party over the Confederation issue.

The development of the provincial rights parties in the provinces can parallel to similar developments at the federal level. Once again, not unnaturally, the party of provincial rights was the Liberal party. On every possible occasion the Liberal leaders advanced a theory of the constitution which emphasized the role of the provinces. When Macdonald altered the financial terms with Nova Scotia, Luther Holton moved:

That in the opinion of this House any disturbance of the financial arrangements respecting the several provinces provided for in the British North America Act unless assented to by all the provinces, would be subversive of the system of Government under which the Dominion was constituted."<sup>26</sup>

This statement of the unanimous consent doctrine of constitutional amendment, though rejected by Parliament in 1869, became standard Liberal constitutional argument. In 1871 when the British North America Act was amended to give undoubted authority for the admission

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26. Canada, House of Commons, Journals, 1869, 260.



of new provinces, David Mills moved:

That the representative legislatures of the Provinces now embraced by the union have agreed to the same on a federal basis, which has been sanctioned by the Imperial Parliament. This House is of opinion that any alteration by Imperial Legislation of the principle of representation in the House of Commons, recognized and fixed by the 51st and 52nd Sections of the British North America Act, without the consent of the several Provinces that were parties to the compact, would be a violation of the federal principle in our constitution, and destructive of the independence and security of the Provincial Governments and Legislatures.<sup>27</sup>

Again this explicit statement of the compact theory was rejected by the House of Commons.

In the same year the Liberals launched an attack on what they considered the vicious system of the dual mandate. Again, it seems hardly necessary to point out that whatever principle was at stake, the system was operating to the disadvantage of its opponents and to the advantage of its supporters. David Mills, who presented the motion for abolition, insisted that, "until there was a complete separation of the Legislative functions of the Local Legislatures and those of the Parliament of Canada, they would never be enabled to fairly carry out the principle of Confederation." Masson, a French-speaking Conservative, replied that the existing system was entirely satisfactory to the Province of Quebec, and that

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27. Ibid., 1871, 254





Mills' motion was nothing short of an attempt to force Ontario views down Quebec throats.<sup>28</sup> Masson was at least partly justified in his view that Quebec was satisfied with the system, for a similar bill had been defeated in two successive years in the Quebec Legislature.

The 1871 debate on the dual mandate in the Quebec Legislature provided an occasion for the local Liberals to define their doctrine of provincial rights and explain their conception of the Canadian federal system. No one was more forthright than Wilfrid Laurier. He began by declaring that the dual mandate was incompatible with Confederation, which he defined as "un faisceau d'états qui ont ensemble des intérêts communs, mais qui néanmoins vis-à-vis les uns des autres, ont des intérêts locaux, distincts et séparés." He continued:

Pour tous leurs intérêts et leurs besoins communs, les états ont une législature commune; la législature fédérale; pour tous leurs intérêts locaux, ils ont chacun une législature locale et séparée. Dans le domaine respectif de leurs attributions, les législatures, tant locales que fédérales, sont souveraines et indépendantes les unes des autres.

He concluded with the Quebec version of the provincial rights rallying cry. "Avec le simple mandat, Québec est Québec; avec le double mandat ce n'est que l'appendice d'Ottawa."<sup>29</sup>

28. Canada House of Commons Debates, 1871, 200, 202.

29. Le Pays, novembre 28, 1871. See also Ulric Barthe, Sir Wilfrid Laurier on the Platform (Quebec, 1890).





It is not, of course, the specific question of the dual mandate that is interesting here - it was soon to be abolished - but rather the arguments that developed around it relative to the nature of the constitution. In contrast to Macdonald's "municipal corporations," the Liberals looked upon the provinces as "independent sovereignties" within the spheres allocated to them by the constitution. The overall implication of the Liberal view, as it emerges from these debates on financial terms, amendment, and dual representation was that of Confederation as the child of a compact entered into by the provinces. These provinces while retaining certain clear and sovereign powers, had delegated matters of national concern to the federal government.

Yet despite the emerging differences between the Liberal and Conservative parties on the subject of dominion-provincial relations, the matter was never explicable simply in party terms in the year immediately after Confederation. Before the constitution had celebrated its fifth birthday, the question of federal ascendancy and provincial rights had already been complicated by the problem of minority rights. An examination of this problem suggests that the simple dichotomy of Liberal versus Conservative must to some extent at least be modified by a second pair of political tags, the "ins" and the "outs".

The problem of minority rights is related to the matter of the federal power of disallowance, which will be examined more closely in the next chapter. For the moment, two points may be established. First, this power was, in Macdonald's view of the constitution, absolutely vital to the preservation of the new nation's integrity and the predominance of the federal government.



As Minister of Justice in 1868 he set down the broad principles which he believed should govern the exercise of the federal veto. He listed four types of legislation:

1. As being altogether illegal or unconstitutional.
2. As illegal or constitutional in part.
3. In cases of concurrent jurisdiction, as clashing with the legislation of the General Parliament.

4. As affecting the interests of the Dominion generally.<sup>30</sup>

It is perhaps worth noting in passing that in addition to the broad character of these principles, the important fact is that the judgement was to be made not by a court but by the Federal Minister of Justice.

A second point that deserves to be noticed at this stage is that the opponents of Confederation, and later the critics of the Macdonald Government, focussed a great deal of attention on the question of disallowance. Both A.-A. Dorion<sup>31</sup> and Oliver Mowat, who, ironically, sponsored the resolutions on disallowance at the Quebec Conference,<sup>32</sup> attacked this power as the chief threat to provincial autonomy. It might therefore be assumed that attitudes toward the exercise of this power could be distinguished on the party lines. But that assumption is only partly correct as the cases of the New Brunswick and Prince Edward Island school questions illustrate.

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30. W.E. Hodgins, Correspondence, Reports of the Minister of Justice and Orders in Council upon the subject of Provincial Legislation (Ottawa 1896) 5-6 (hereafter Dominion and Provincial Legislation).

31. Confederation Debates, 258.

32. Sir Joseph Pope, Confederation Documents (Toronto 1895), 30.







In 1871 the Legislature of New Brunswick enacted a statute dealing with the school system which brought protests from the Roman Catholics of that province and demands that the legislation be disallowed. Macdonald refused to accede to his petitioners' request, indicating his reasoning as follows:

Now the provincial legislatures have exclusive powers to make laws in relation to education, subject to the provisions of the 93rd clause of the British North America Act. Those provisions apply exclusively to the denominational, separate, or dissentient schools, they do not in any way affect or lessen the power of such provincial legislatures to pass laws respecting the general educational system of the province.

It may be that the Act in question may operate unfavourably on the Catholics or other religious denominations, and if so, it is for such religious bodies to appeal to the provincial legislature, which has the sole power to grant redress.

As, therefore, the Act applies to the whole school system of New Brunswick, and is not specially applicable to denominational schools, the Governor General has, in the opinion of the undersigned, no right to interfere.<sup>33</sup>

When a motion calling for the disallowance of the Act was introduced into the House of Common, both Macdonald and Cartier defended the Government's refusal to exercise the power of disallowance. Both of them argued that if education had not been placed under the

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33. Dominion and Provincial Legislation, 662-3.

"The only place"

jurisdiction of the provinces in 1867, Quebec would never have joined the union. Cartier further warned that the countenance interference in this case would create a precedent dangerous to Quebec. Speaking for the Opposition, A-A. Dorion insisted that the Government "ought to interfere for a third of the people of New Brunswick have been treated unfairly." <sup>34</sup>

The following year, however, the House passed a resolution strongly regretting the action of the New Brunswick Legislature. The resolution expressed the hope that the minority's grievance would be redressed, and suggested that the opinion of the Judicial Committee of the Privy Council be sought on the subject of the legal position of Roman Catholic schools in New Brunswick. This resolution brought a loud protest from the Government of New Brunswick. The protest pointed to the dire consequences which the passage of the resolution in Ottawa would produce, for its intention was to alter the very basis of Confederation and lead to the "centralization of power in the Parliament of Canada."<sup>35</sup>

The assumption of office by Alexander Mackenzie's Liberals allowed the friends of the minority in New Brunswick ( and also the enemies of the Liberal party) to test the sincerity of the Liberals' earlier demand for federal intervention in the New Brunswick school case. John Costigan moved that the British North America Act be amended to empower the federal authorities to alter the school legislation in New Brunswick. This proposition

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34. Canada, House of Commons Debates 1872, 197,706,709.

35. Dominion and Provincial Legislation, 453-79





was naturally strongly opposed by the Mackenzie government, David Mills remarking that the resolution represented a "very serious violation of the federal compact."<sup>36</sup>

Of course, the extraordinary Costigan proposal was hardly comparable to the earlier demand for disallowance. In 1877, however, there was a case offering a closer parallel. In that year a demand arose for the disallowance of an Act passed in Prince Edward Island which the Roman Catholic minority felt infringed upon their rights. In his report explaining his refusal to exercise the federal power of disallowance Rodolphe Laflamme stated:

...however arbitrary or unjust the mode of enforcing it may appear, it would not seem proper for the federal authority to attempt to interfere with the details, or with the accessories of a measure of the local legislature, the principles and objects of which are entirely within their province.<sup>37</sup>

Thus, by 1877, both parties had been faced with the thorny question of the relation between minority rights and provincial rights and their answer had been the same: provincial rights have precedence over minority rights. Another decade was to pass before the question was to be raised again in serious form, and during that decade the struggle between those who upheld the federal ascendancy and those who argued for provincial rights reached a new level of intensity. There were few arguments presented in the later period that had not been at least implied in the discussions of the subject during the first decade of Confederation.

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36. Canada, House of Commons Debates, 1875, 576.

37. Dominion and Provincial Legislation, 1197





### Chapter III

#### THE PROVINCIAL RIGHTS OFFENSIVE

While federal politicians could spar and even exchange the occasional heavy blow over provincial rights, the main match was between the federal and provincial governments. The contestants' colours had not, however, changed, for the 1870's and early 1880's witnessed the birth and growth of a provincial rights movement, composed largely of provincial Liberal parties, which reached its culmination in the Inter-Provincial Conference of 1887.

There is no easy explanation of the revival of local loyalties in the 1870's and 1880's. There are several partial explanations. In the first place, it is plain that despite the hopes of the Fathers of Confederation that a "new nationality" could be conjured up to replace local loyalties, the development was more easily described than achieved. This is not altogether behind it, while the Dominion was a new entity. The brilliant Christopher Dunkin in his speech criticising the federal scheme in 1865 had prophesied that the "new nationality" would be a fragile flower. He explained:

We have a large class whose national feelings turn towards London, whose very heart is there; another large class whose sympathies centre here at Quebec, or in sentimental way may have some reference to Paris; another large class whose memories are of the Emerald Isle; and yet another whose comparisons are rather with Washington; but have we any class who are attached, or whose feelings are going to be directed with any earnestness, to the city of Ottawa, the centre of the new nationality that is to be created? In the times to come, when men shall begin to feel strongly



on those questions that appeal to national preferences, prejudices and passions, all talk of your new nationality will sound but strangely. Some older nationality will then be found to hold the first place in most people's hearts.<sup>1</sup>

Perceptive as these remarks were, what not even the realistic Dunkin perceived was that British North Americans felt even stronger provincial loyalties than the ones to which he pointed.

Doubtless, too, the economic depression which struck Canada in the early 1870's contributed greatly to the stifling of whatever "national" outlook had developed in the years immediately after Confederation. This factor, and its implications, was noted in the Rowell-Sirois Report:

A bald statement of the length of the depression gives little hint of its effect upon the lives of the people. Federal policies had burdened them with debt and failed to bring prosperity. The only large-scale remedy which the Dominion had been able to offer was the National Policy of 1879. In these circumstances the provinces had to do what they could to help themselves, looking to the Provinces for the help which the Dominion failed to give. The provincial government attempted to promote expansion on their own frontiers by railway building and immigration policies. But most of them quickly discovered the strait jacket in which the financial settlement of Confederation had placed them.

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1. Confederation Debates, 511.





The agitation for better terms gathered strength and led to differences with the Dominion. The failure of the Dominion's economic policies, which formed such important elements in the new national interest, discouraged the growth of a strong, national sentiment; and local loyalties and interests began to reassert themselves.<sup>2</sup>

And finally, as has already been suggested, it would be a mistake to underestimate the significance of the rivalry of the political parties in the growth of provincial rights. It is no accident that the provincial rights standard was first firmly planted in Ontario after the Liberals had gained office, that it was the Liberal party in Quebec that used the same weapon in its quest for power, and that in both Nova Scotia and Manitoba provincial rights became the leading plank in the Liberal party's platform. To say this, of course, is to leave unresolved the chicken-and-egg question of which came first: provincial rights sentiment or the Liberal party? The question is unresolvable. What is quite plain, however, is that once the Liberal party had attained power in several provincial seats of government, the federal Conservative party found itself hard pressed to maintain its concept of the predominance of the federal government. When the onslaughts of the provincial Liberal governments found support in the decisions of the Judicial Committee of the Privy Council, the concept of federal predominance suffered a serious defeat.

It was probably inevitable that the richest province, the province least dependent upon federal financial aid, should become the

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2. Report of the Royal Commission on Dominion-Provincial Relations, Book I, 54.



first and most effective bastion of the provincial rights cause. After 1867 Ontario was the wealthiest, actually and potentially, of all the provinces. It was also the province with the most effectively organized system of local government and public finance. Its concern therefore was not to obtain further financial concessions from Ottawa, but rather to prevent the federal government from granting better terms to other provinces at Ontario's expense. It was also concerned to run its own affairs and, to the extent possible, to direct its own development free from the interference of the federal government. Yet these abstractions explain everything and nothing, unless the political and personal factors are recalled. Only if it is remembered that Macdonald and Mowat belonged to different temperaments, and had long been on touchy personal terms, can the bitterness of the quarrel between Ottawa and Toronto be understood. Like most disputes over great political principles, the struggle of federal ascendancy versus provincial rights was characterized by very mixed motives.

The quarrel between Ontario and Ottawa centred on three general questions, two of which had several particular aspects. All related to the exercise of federal powers which Mowat believed unjustifiably constrained the provincial governments and threatened provincial autonomy. The questions at issue were the position of the Lieutenant-Governor, the federal power of disallowance, and the Manitoba-Ontario boundary dispute. Each of these questions has received detailed examination in the published study of Mr. J. Morrison and what follows is in large part, an abstract of that author's work, reducing the detail to manageable proportions and concentrating on the provincial





rights concept.<sup>3</sup>

As Morrison has clearly shown, the Manitoba-Ontario boundary dispute concerned no question of provincial rights in a constitutional sense. Nevertheless it provides necessary background, and offers a very material explanation of the bitterness with which the war over, other, more abstract, questions was fought. In its barest detail the question related to the undefined northwestern border of Ontario. The initial steps taken by the John Sandfield Macdonald administration to settle the question were repudiated by the Liberals when they came to power in 1872. A settlement reached by an arbitration board established jointly by the Mowat and Mackenzie administrations was in turn repudiated by Conservatives on their return to office at Ottawa. In 1881 Macdonald attempted to settle the issue by enacting legislation extending the eastern boundaries of Manitoba, but this settlement was unacceptable to Ontario. In 1884, after a period of near civil war in the disputed territory, it was agreed to submit the dispute to the Judicial Committee of the Privy Council, which ruled in Ontario's favour. Macdonald, in effect, refused to recognize this decision and it was not until a second Judicial Committee ruling was obtained in 1888 that the matter was finally terminated. It is easy to understand that a dispute of this nature, even stripped of all its details, could do nothing but create the worst atmosphere of suspicion between the Dominion and the Province of Ontario. Morrison's balanced conclusion seems fully justified. "The blame for this delay," he writes, "and for the animosities thereby

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3. J. C. Morrison, Oliver Mowat and the Development of Provincial Rights in Ontario, 1867-96 A Study in Dominion-Provincial Relations 1867-96 (published under the Auspices of the Ontario Department of Public Records and Archives, n.d.).





engendered cannot be laid wholly on one side or the other; rather it must be attributed to the mutually antagonistic aims of Ontario and the Dominion, complicated by the personal antagonism between Mowat and Macdonald and by the rivalry, jealousy, and 'fear of domination' which exercised the Provinces of Ontario and Quebec".<sup>4</sup> It was against the background of this quarrel that the constitutional issues relating to the Lieutenant-Governor and the federal power of disallowance were fought.

The office of the Lieutenant-Governor, as a leading authority has written, "in theory at least, was an integral part of the scheme which was designed in 1867 to assure the paramountcy of the central government in the federation."<sup>5</sup> It was Mowat's belief that if the autonomy of the provinces was to be fully established, the status of the Lieutenant-Governor had to be altered. The object was to make the Lieutenant-Governor as much the representative of the Queen in the province, as the Governor General was the representative of the Queen in federal affairs. This, of course, directly contradicted the original view of the Lieutenant-Governor as an officer of the federal government in the province.

As is so often the case in constitutional disputes, the quarrel about the Lieutenant-Governor erupted over a question of patronage. This issue was the right of the province to appoint Queen's Counsel. Beginning as early as 1872, Ontario and the federal government had disagreed about the right of the Lieutenant-Governor to make this appointment. The details of the argument are unimportant, except

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4. Ibid., 99.

5. John T. Saywell, The Office of the Lieutenant-Governor (Toronto, 1957), 162.



to say that on the apparent understanding that Dominion approval had been granted, legislation on the subject of Queen's Counsel was passed by the Ontario Legislature in 1873. In 1886, however, the federal government determined to ignore provincially appointed Queen's Counsel. Mowat's angry protest against this apparent reversal of federal policy was couched in terms designed to express his view of the status of the Lieutenant-Governor:

The position of my Government is, that the Lieutenant-Governor is entitled virtute officii, and without express statutory enactments, to exercise all prerogatives incident to Executive authority in matters over which Provincial Legislatures have jurisdiction; as the Governor-General is entitled virtute officii and without any statutory enactment, to exercise all prerogatives incident to Executive authority in matters within the jurisdiction of the Federal Parliament....<sup>6</sup>

In short, the Lieutenant-Governor was seen to hold a status comparable to that of the Governor General, rather than that of an officer of the federal government.

Though the battle over the status of the Lieutenant-Governor did not end here, this passage is enough to illustrate Mowat's concept of the office, and also of the place of the provinces within Confederation. Mowat pursued this question with his usual tenacity through a number of disputes, and then had the matter taken up at the Inter-Provincial Conference in 1887. While the federal government

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6. Ontario Sessional Papers, 37, XX, Part IV, 1886, Lieutenant-Governor to Secretary of State, January 9, 1886.





never accepted Mowat's view of the office of the Lieutenant-Governor it received a much more sympathetic hearing from the Judicial Committee of the Privy Council, as the 1892 case of The Liquidators of the Maritime Bank of Canada v the Receiver General of Canada indicated.

Again, with respect to the dispute over the federal power of disallowance, detailed examination seems unnecessary since it has been analysed both by Morrison and La Forest.<sup>7</sup> What remains to be considered is neither the detailed argument nor the legal subtleties, but rather the part that this dispute played in the development of the autonomist argument.

While Ontario was prepared to protest the use of the federal power of disallowance even during the regime of John Sandfield Macdonald, it was not until Mowat took office that the question assumed any serious proportions. As always, there was an important material issue at stake.<sup>8</sup> It arose first over the disallowance of an Ontario Act relating to Escheats and Forfeitures. In disallowing this Act, which was designed to provide revenues for the provincial treasury, the Federal Minister of Justice argued that it represented an unconstitutional infringement on the Governor General's prerogatives and on federal jurisdiction over criminal procedure.<sup>9</sup> Mowat's reply was that since the provinces before Confederation had exercised control over these matters, they retained the power after Confederation. He then outlined his conception of the legal basis of Confederation in this important paragraph:

7. G. V. La Forest, Disallowance and Reservation of Provincial Legislation (Department of Justice, 1955).

8. Dominion and Provincial Legislation, 87.

9. Ibid., 110.



Either...escheated and forfeited property belongs still to the provinces, or the Crown at Confederation resumed all provincial rights which the Confederation Act did not deal with, an alternative which is wholly unsupportable, and which the undersigned trusts the authorities of the Dominion, as well as those of the provinces, will at all times unite in repudiating. The undersigned assumes it to be undeniable that all rights of the provinces as they existed before Confederation have, by the Confederation Act, been divided between the Dominion and the provinces, and that whatever has not been given to the former is retained by the latter.<sup>10</sup>

To this claim the Federal Minister of Justice replied, not unexpectedly, that "on the contrary, whatever right has not been given to the provinces, is vested in the Dominion."<sup>11</sup> It is noteworthy that at the time of this exchange the federal Minister of Justice, A-A. Dorion, was a member of a Liberal administration. It is thus clear that while the federal Liberals were prepared to take provincial rights as a rallying cry, they were unwilling to accept Mowat's extreme claim regarding the residual power. Throughout most of the Mackenzie administration, the question of the federal power of disallowance raised no serious disagreements, though Edward Blake was by no means reluctant to threaten its use.<sup>12</sup>

It was only after Macdonald won a sweeping victory in the election of 1878 that the dispute over disallowance became a primary

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10. Dominion and Provincial Legislation, 113.

11. Ibid., 119.

12. Morrison, Oliver Mowat and Provincial Rights, 198-9.





issue in the relations between the Dominion and Ontario. While there were several pieces of legislation at issue, the one which best illustrates the practice and theory of the two disputants related to "An Act for Protecting the Public Interests in Rivers, Streams and Creeks," which was enacted by Ontario in 1881. The bare facts of the case concerned a demand from a logging company owned by one Caldwell, a reputed Mowat supporter, to make use of a river that had been improved for the purpose of floating logs by one McLaren, a reputed Conservative. The Ontario Act of 1881 gave all persons the right to make use of the river in question.

The Federal Minister of Justice disallowed the Act on the grounds that it took away "the use of his property from one person and (gave) it to another", an act which represented a "flagrant violation of private right and natural justice."<sup>13</sup> The Ontario government's reply came quickly and it struck at the crucial question of the federal government's right to judge in such a critical and controversial matter. It then went on to state the province's assumptions about the nature of Confederation in a forthright fashion:

The Confederation Act was intended to give practical effect to the exercise of the fullest freedom in administration and control in local matters within each Province, which was the main object of Quebec and Ontario, especially, in seeking such union. This fundamental principle of local self-government runs through the whole of this constitutional Act, and in order that it may be preserved intact, the utmost

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13. Dominion and Provincial Legislation, 178.





vigilance on the part of every Province should be constantly alive to every attempt of the Central Government to transfer the control of Local Affairs from the Government having the greatest interest in them, and possessing the fullest knowledge of them, and under a direct responsibility to the people of the Province, to a Government which necessarily has the least knowledge of, and the smallest interest in, such matters.<sup>14</sup>

In the two subsequent sessions of the Ontario Legislature, the Act was passed again, only to be disallowed. In 1884 it was re-enacted and finally accepted. In the course of this heated struggle the theory of the sovereignty of an autonomous province had been fully refined. In the session of 1882-3 Mowat made explicit his view that the federal power of disallowance, as exercised in the Ontario Rivers and Streams case, was wholly destructive of the federal system. He maintained:

The principle involved in this disallowance was of the gravest character. It destroyed the self-government they thought they had secured by the British North America Act. It involved the admission that the functions of the Federal Government are to examine each act of that Legislature, and if they disapproved of it, veto it.<sup>15</sup>

Issues such as those involved in the Ontario Rivers and Streams bill naturally spilled over into federal politics. At Ottawa the

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14. Ibid., 179.

15. Morrison, Oliver Mowat and Provincial Rights, 221.



division usually took place on strict party lines. In 1882, speaking on this matter, Wilfrid Laurier delivered an eloquent plea for a non-partisan approach to the question, directing his appeal especially to his colleagues from Quebec. "The occasion may arise some day when the rights of our Province may be interfered with, and then if we fail to get the measure of justice which we should expect we shall have only ourselves to blame."<sup>16</sup> Mr. Mousseau, a Quebec Conservative, had no sympathy for such a doctrine; he believed that the safety of the rights of French Canada rested with the federal authorities. "Well, I am glad that there are in our constitution," he said, "two great safeguards which will ensure the success of Confederation; the first is that the Dominion Parliament may dismiss the Lieutenant-Governors, and the second that we may disallow Bills passed by the Local Legislatures."<sup>17</sup> A more unabashed defence of the predominance of the central government in the federal system would be difficult to discover. It is not without interest that the two questions which Mousseau doubtless had in mind related as much to party politics as they did to constitutional theory: the Letellier affair and the Ontario Rivers and Streams Bill.

In the same year that the Rivers and Streams Act was finally allowed to stand, a new dispute broke out which once again united questions of constitutional principle with political patronage. In 1884 the Ontario Legislature passed an "Act Respecting Licensing Duties." It was immediately disallowed. This Act was Mowat's reply to the Dominion Licensing Act of the previous year, which in turn had been an effort to override an Ontario statute of 1875. As

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16. Canada, House of Commons Debates, 1882, 907.

17. Ibid.





Morrison summarizes the subsequent discussion, "it was less a constitutional dispute on the subject of disallowance than a political struggle for control of the patronage involved in supervising the liquor trade."<sup>18</sup>

The case was further complicated by the fact that in the case of Hodge v the Queen (1883), the Judicial Committee of the Privy Council found the Ontario legislation of 1875 valid. The federal government intended, apparently, to ignore that decision.<sup>19</sup> In the end this rather squalid quarrel was settled by the courts in Ontario's favour. But the moral Mowat drew from the incident was plainly stated during a speech in the Ontario House in 1884. He declared:

I think the veto power is a bad thing, and stands in the way of the prosperity of this Province, and I think every Province should desire it to end. I think experience shows that it was a mistake to give it to the Dominion authorities. I am sure that Confederation would not be weakened if it were taken away, and I desire it should be taken away. I desire it to be taken away because I wish our Province to improve at its greatest possible pace, so that it may come to the greatest possible strength.<sup>20</sup>

By this date, 1884, Mowat had won a large part of his battle. But he was prepared to carry the war further, especially since by

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18. Morrison, Oliver Mowat and Provincial Rights, 224.

19. Canada, House of Commons Debates, 1884, 942 et seq.

20. Morrison, Oliver Mowat and Provincial Rights, 229-30



this time he was finding allies in other provinces, notably Quebec, Nova Scotia and Manitoba. Each of these four provinces had specific grievances but all, by 1887, were prepared to attribute their troubles to the federal government's paternalistic attitude toward the provinces.

In Québec the origins of the provincial rights doctrine was as closely connected to the political struggles of the day as it was in Ontario. Perhaps even more so, for in Québec each party, while presenting itself as the defender of autonomy, was prepared to forego principle for power when the occasion necessitated it. What was true of parties was true of individuals. For example, the independent journal L'Opinion Publique carried two comments on the New Brunswick school question which are very revealing. In 1872 the Macdonald Government's refusal to disallow the New Brunswick School Act gave L. O. David an opportunity to point out that all his direct warnings of 1867 had proven correct. He noted, without mentioning that his main reason for opposing Confederation in 1867 was because he believed the federal government was too powerful, that

Ceux qui se moquaient de nous en 1866, parce que nous disions, en combattant la Confédération, que le droit de veto ne fonctionnerait qu'en faveur de la majorité anglaise et protestante, nous permettront-ils de lui demander en passant qui avait raison.<sup>21</sup>

In the same journal a few months later, J. A. Mousseau put the case for the defence by pointing out that French Canadians would be placing themselves in a dangerous position in calling on the federal

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21. L'Opinion Publique, III, 24 (13 juin 1872).



government to intervene in New Brunswick. That would surely create an undesirable precedent whereby the federal government might someday intervene in Quebec's affairs.<sup>22</sup>

Nor did these arguments exhaust the possibilities when it came to arguing about the nature of the constitution and the rights of the provinces. In 1874 the journalist, Oscar Dunn, presented a particularly interesting example of the uses to which the compact theory could be put. The context of the discussion was the difficulty that had arisen between the federal Liberal government and the Province of British Columbia over the implications of the agreement to build the Canadian Pacific Railway. The agreement had been part of the terms of British Columbia's entry into Confederation and the Mackenzie administration, facing shrinking financial resources, was anxious to modify the terms. Dunn asked the question of whether this could give British Columbia grounds for secession. He wrote:

La constitution, il est vrai, fait du Pacifique une condition spéciale de l'entrée de la Colombie; mais en fait-elle vraiment une condition principale, essentielle? Il nous semble plutôt que l'idée principale du pacte fédératif est l'idée nationale, l'idée de fonder un pays, une grande patrie, une nouvelle nationalité dans le monde.... Si l'on admet ce point de départ, si on laisse cette formule première au frontispice de nos institutions, le pacte fédéral devient facile à interpréter. Constituer un pays nouveau, en est le terme auquel toutes ces clauses sont subordonnées....Organiser un peuple, voilà le but; cons-

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22. Ibid., III, 43 (24 octobre 1872):





truire le Pacifique, voilà le moyen d'y arriver. Et si tel est le cas, cette entreprise peut-être considérée comme un état nécessaire, mais non comme une fondation première, comme la condition primordiale du contrat de confédération, et, par conséquent, la législature fédérale, en tant que représentante des provinces intéressées au même degré dans ce contrat, pourrait modifier les détails de la construction du Pacifique sans donner par là à la Colombie le droit de sortir de l'union.<sup>23</sup>

Needless to say this view was more easily defended in Quebec than in British Columbia.

Yet even when events closer to home are considered, it is not easy to find completely consistent arguments about the nature of the constitution, of federal powers, and of provincial rights. Nothing illustrates this better than the two controversies over the role of the Lieutenant-Governor. The first arose in 1874 when the Ouimet Government was forced to resign following revelations concerning the so-called Tanneries scandal. When the question arose as to which set of politicians should be called upon to form a new government the Liberals adopted the line that the Lieutenant-Governor, as a federal officer, should follow whatever instructions were given him by Ottawa. The federal government at the time was, of course, in the hands of the Mackenzie administration. The case was put in a series of letters published in L'Evenement under the signature "Quelques Députés." According to Robert Rumilly the author was the well-known Liberal, François Langelier. "Le lieutenant-gouverneur

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23. Ibid., V, 6 (5février 1874).



est l'officier, le représentant de l'Exécutif fédéral dans le gouvernement local," the writer argued. "Il est là pour gouverner la province au nom du gouvernement fédéral. Il doit donc la gouverner suivant les vues de ce gouvernement."<sup>24</sup> This was Liberal doctrine which Oliver Mowat would certainly not have recognized.

On the Conservative side, however, there was a view expressed which would have been equally unrecognizable to Sir John A. Macdonald. Oscar Dunn, defending the choice of the Conservative Boucherville rather than the Liberal Joly, insisted that the Lieutenant-Governor, though appointed by Ottawa, drew his authority from the province and was thus independent of federal directives. He concluded his argument by conjuring up the ogre of legislative union, the favourite demon of every provincial rightist:

Avant 1867, on a prétendu que notre confédération n'était qu'une union législative déguisée; il faut avouer que si aujourd'hui l'on parvient à faire triompher cette doctrine de la sujétion des lieutenants-gouverneurs, personne ne parlera davantage de déguisement, l'union législative sera fait accompli.<sup>25</sup>

The purpose of the remark was, of course, to pour salt on rouge wounds. The irritation was increased, no doubt, by the warnings issued by the Conservative La Minerve on the dangers of the doctrine of rouge à Ottawa, rouge à Québec. "Si M. Joly et ses amis montaient au pouvoir à Québec, ce serait pour se constituer les humbles valets de MM. Mackenzie et Fournier. L'exploitation de notre province,

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24. Robert Rumilly, Histoire de la Province de Québec, (Montréal, n.d.), I, 284.

25. L'Opinion Publique, V, 41 (octobre 1874).





commencée à Ottawa, se continuerait à Québec. En réalité, se seraient MM. Fournier, Geoffrion et Laflamme qui gouverneraient."<sup>26</sup>

Five years after the Ouimet controversy as much more violent dispute broke out over the role of the Lieutenant-Governor, a dispute which gives weight to Rumilly's description of Quebec parties in this period as "les églises sans dogmes, mais non sans mystiques."<sup>27</sup> The affair began with Lieutenant-Governor Letellier's coup d'état of 1878. In brief, the difficulty arose out of the decision of the Lieutenant-Governor Luc Letellier St. Just, who had been appointed by the Mackenzie Government, to dismiss his Conservative ministry headed by Charles Boucher de Boucherville. He chose to dismiss his ministry rather than accept its advice on the subject of a railway bill passed by the legislature.<sup>28</sup> Henri Joly de Lotbinière, the Liberal who was called upon to form a government, defended the position of his government and the action of the Lieutenant-Governor in the following terms:

En vertu de la constitution nous jouissons de  
l'autonomie, du droit de nous gouverner nous-mêmes;  
et dans la sphère de nos attributions nous ne sommes,  
comme gouvernement, inférieurs à aucun gouvernement.  
La Province de Québec traverse en ce moment une crise  
qui met son autonomie en danger. La tentative que  
l'on a faite pour obtenir la destitution du lieutenant-  
gouverneur constitue un danger pour notre indépendance

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26. La Minerve, 1 juin 1875, in Rumilly, Histoire I, 323.

27. Rumilly, Histoire, III, 58.

28. J. T. Saywell, op. cit., 113-119.



provinciale. Mes honorables amis de la gauche considèrent le lieutenant-gouverneur comme un simple serviteur du pouvoir fédéral. Je suis d'un avis contraire...<sup>29</sup>

At Ottawa the Conservatives fulminated against the action of the Quebec Lieutenant-Governor, moving a motion condemning his action. The Mackenzie Liberals, then in office, had to fight off the resolution, though they were in an embarrassing position as the defenders of the somewhat arbitrary act of Letellier. The path between the horns of this dilemma was naturally to defend provincial rights. Prime Minister Mackenzie argued that "nothing could be more fatal to provincial autonomy which exists under the Confederation act than such an unwise and unwarranted interference...."<sup>30</sup>

Elections soon followed both in Quebec and on the federal level. The contest in Quebec resulted in a stalemate. In the Dominion election the Conservative party returned. When the Quebec electorate failed to remove Joly, and by implication Letellier, Quebec Conservatives turned to their federal allies for assistance. There were few philosophical or even constitutional arguments in the letters which Macdonald received from Quebec supporters in their appeal for the removal of the erring Lieutenant-Governor. Mousseau wrote: "You see Sir, I am dealing only with the political aspect of the coup d'état and removal. I leave to you the constitutional aspect. But I cannot help saying what everybody says: "If Letellier did not do enough to deserve being kicked out what must he do?"<sup>31</sup> Chapleau was perhaps a little more subtle: "Le temps serait mal

29. Débats de la Législature de Québec (hereafter Débats), 1879, 720

30. Canada, House of Commons Debates, 1878, 1902

31. Public Archives of Canada (hereafter P.A.C.); Macdonald Papers 95, Mousseau to Macdonald, November 15, 1878.





choisi pour apprendre à la Province de Québec que le Lieutenant-Governor (sic), qui lui est périodiquement imposé par les autorités fédérales, est sûr de l'impunité tant qu'il ne dérange pas, d'une manière absolue et directe, les opérations politiques du cabinet fédéral, et que l'autonomie politique de la Province est à la merci, sans crainte de censure pour l'acte qui la viole, pourvu que l'officier fédéral réussisse ensuite à s'acheter un semblant de la majorité dans la Chambre d'Assemblée."<sup>32</sup>

Macdonald wavered; the realism of Quebec politics seemed too much even for the old chieftain. He was convinced enough of the power of the federal government to depose Letellier, but he did not want to burst open the hornet's nest of provincial rights. Finally, however, a method of action was agreed upon. In March 1879 Mousseau introduced a motion in the House of Commons calling for the dismissal of Letellier. The debate which followed allowed all the changes to be rung on the themes of provincial autonomy and federal power, but the resolution passed. After a complicated argument with the Governor-General, who was opposed to the deposition Letellier was finally removed from office.<sup>33</sup> In the end the matter was carried to London, but the Colonial Office upheld the claim of the federal authorities that Ottawa could dismiss a Lieutenant-Governor "if he wears a black cravat, and they wish him to wear a blue one."<sup>34</sup> Only the slip in the tie colours makes the instance inexact!

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32. Ibid., Chapleau à Macdonald, 2 décembre 1878.

33. Saywell, The Lieutenant-Governor, 234-48.

34. A. Joly de Lotbinière, "Mr. Joly's Mission to London in the case of Lieutenant-Governor Letellier St. Just" Canadian Historical Review, XXXI, 4, (December 1950,) 403.





The politics of provincial autonomy, in the Letellier case, presents a perfect illustration of the subordination of constitutional theory to political interest. Subtle constitutional arguments were obviously easily devised to support varying political needs. In the years after 1878, the Letellier affair became the King Charles' head of Quebec politics as the debate on autonomy grew more vigorous and more frequent, as provincial finances became increasingly shaky.

The chronic financial difficulties experienced by provincial governments in Quebec was the result of at least three causes. In the first place the province lacked those municipal institutions which in Ontario were able to bear some of the burden of public expenditure. Secondly, in common with other provinces, Quebec was reluctant to exercise its powers over direct taxation and this became a matter of great political importance in the 1880's. Finally, despite its financial position, the Quebec government was generous, not to say lavish, in the financial support it gave to railway construction. The combination of these circumstances produced a situation in which Quebec repeatedly found it necessary to press the federal government for modifications of its subsidy, or for special financial arrangements. Throughout the 1880's nearly every budget speech presented by the Quebec Provincial Treasurer was concerned with the inadequacy of the federal subsidy. The question of autonomy was readily linked with this financial question, for a province obviously was not autonomous unless it could pay its own way.<sup>35</sup>

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35. Maxwell, Federal Subsidies, 56-63. See also Robertson's speech in Débats, 1880, 475-7



An example of the problems that the province's financial difficulties could create is seen in the debate on the Address in Reply to the Speech from the Throne in 1881. The speech itself presented a glowing picture of the province's past achievements and future prospects. Joly, the Opposition leader, was unimpressed. He launched an attack beginning, naturally, with reference to the damage that had been done to provincial autonomy in the Letellier affair, and then turning to the financial problem:

Nous sommes arrivés à une position critique. Après quatorze années d'autonomie provinciale, nous avons en face de nous un état de choses terribles, et il est plus que probable que la province ne pourra sortir des embarras financiers où elle se trouve et faire honneur à ses engagements qu'en ayant recours à la taxe directe.<sup>36</sup>

Mercier, who was much quicker than Joly to grasp the "national" implications of every political situation, moved later in the same session for a special committee to consider the financial question and to propose remedies. For Mercier, there were two alternatives: better terms or the imposition of a direct tax. His explanation of why, in his view, Quebec received less satisfactory treatment than the other provinces is important:

Et il est bien permis de dire après ce qui s'est passé depuis quelques années à Ottawa, que nous n'obtiendrons rien de ce côté. Tous les gouvernements qui s'y sont succédés depuis les premiers jours de la Confédération ne se sont guère occupés de notre province. Pourquoi? C'est

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36. Débats, 1881, 363.





bien simple. La majorité est anglaise dans la Puissance, et elle est canadienne-française dans la Province de Québec. Nous sommes la minorité et il nous faut subir la loi du plus fort. Elle est inexorable et ses conséquences sont inévitables. Nous avons fait une union désavantageuse, nous l'avons accomplie, nous devons la subir en silence et tout ce que nous avons à faire c'est de tâcher de l'améliorer nous-mêmes par nos propres ressources, avec intelligence et patriotisme, et sans compter sur les autres. Le jour où il faudra compter sur les autres. Le jour où il faudra compter fatalement et inexorablement avec le gouvernement d'Ottawa comme notre seule ressource pour nous tirer des embarras financiers dans lesquels on se trouve, ce jour-là marquera notre déchéance nationale.<sup>37</sup>

The Government, of course, rejected these suggestions, but repeatedly in the following years the debates ranged over the same subjects.

In 1884 the situation had reached such a serious stage that the provincial government had to use all its resources and power to win a concession from Ottawa. Interestingly, it would appear that its greatest resource in this particular battle was the one that Cartier, in the Confederation debates, had claimed French Canada would always have: its strong federal delegation.

Neither the details of the Quebec debt nor the reasons advanced by the province for a readjustment of its subsidy are of any great importance in this context.<sup>38</sup> The point of greatest interest is the

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37. Ibid., 1881, 844.

38. Maxwell, Federal Subsidies, 56-63.



method used to obtain a financial concession. Nevertheless, it is worth mentioning that the largest part of Quebec's financial problems arose out of railway construction. After the subsidy readjustment of 1874 the province had been left nearly debt-free; by 1882 it had established a debt of \$15,000,000 on which the annual charges were about \$885,000. Despite Chapleau's decision in 1882 to sell the North Shore Railway in order to reduce the province's indebtedness, financial difficulties remained nearly insurmountable. Since the imposition of a direct tax was politically unthinkable, the government determined to appeal to Ottawa.

The basis for Quebec's claim in 1884 was that since the federal government was providing financial support for railways running west, it should also subsidize railways in Quebec which were part of the national system. There was also a second claim based on the old problem of the pre-Confederation debt. When the demand was first presented, Ottawa, for all practical purposes, turned a deaf ear. Then in 1883 Chapleau and Mousseau changed places, giving a perfect illustration of the close relations between federal and provincial wings of the party. Mousseau became Premier, Chapleau took the vacant seat in the federal cabinet. Early in 1884 Mousseau began pressing with renewed vigour Quebec's claims for better terms. The federal Members of Parliament were soon presented with a situation tailored for their purposes. It happened that early in the 1884 session the Government brought forward certain resolutions to provide additional financial assistance for the C.P.R. Apparently, though the details are by no means all firmly established, the Quebec members caucused and decided that unless the demands of their



province were met, they would not be able to support the C.P.R. resolutions. In the face of this threat the Macdonald Government relented, and the Province of Quebec received a special subsidy. Macdonald denied that his decision was made with a shotgun at his head, but the coincidence was too obvious to be wholly accidental.<sup>39</sup>

The Liberals were, of course, exceedingly self-righteous about these blackmailing tactics. Laurier argued that an act of this type was a threat to the autonomy of the provinces, for it placed every province at the mercy of the federal treasury.<sup>40</sup> While the charge was valid enough, it left unanswered, and probably unanswerable, the question of the point at which provincial expenditures could no longer be considered legitimate. It was true, of course, that a sound principle of government finance was that the government that spends should also collect. But that was perhaps a less realistic principle than it sounded if the general attitude toward direct taxation is remembered.

At any rate Quebec obtained redress of its financial grievances in 1884. But the question of provincial rights, which had been associated with the financial question, was far from dead. Indeed by 1884 it was entering a new, more vigorous phase. In the previous year the first important statement in Quebec of the legal basis of provincial autonomy had been advanced by Judge T.J.J. Loranger in his Letters upon the Interpretation of the Federal Constitution known as the British North America Act (1867). Loranger was a

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39. Ibid., 60, Canada, House of Commons Debates, 1884, 1490 et seq.

40. Ibid.





conservative, a fact which the provincial liberals revelled in pointing out, for his letters provided them with just the documentation they required for their speeches on autonomy.

Loranger's immediate concern was with the signs of centralization which he detected in such legislation as the Licensing Act of 1883. In his examination of the powers of the federal government he presented the theory that the legal basis of Confederation was a compact among the provinces, a theory very similar to that upon which Mowat was acting in Ontario. Indeed, it is interesting to note that one of the chief purposes of Loranger's letters was to tell his readers that it was time Quebecers stopped letting Ontario do all the work in the fight to defend provincial autonomy.

The Quebec judge's view of the "federal compact" was based on the following historical observation:

The resolutions of the Quebec Conference were founded upon the principle of the strict equality of or equal authority between the Dominion and the Provinces, without the subordination of the latter to the former, within the limits of their respective powers. In the sphere of their local powers the authority of the provinces was to remain absolute, as the federal power was to be within the limits of the general powers. It was upon these conditions that the provinces, and especially the province of Quebec, consented to enter the Federal



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Union.

Fundamental to his whole case was Loranger's contention that the federal government was the creation of the provinces which existed before Confederation and were certainly not abolished by it. He wrote:

In constituting themselves into a Confederation, the provinces did not intend to renounce their autonomy. This autonomy with their rights, powers and prerogatives they expressly reserved for all that concerns their internal government; by forming themselves into a federal association, under political and legislative aspects, they formed a central government, only for interprovincial objects, and, far from having created the provincial powers, it is from the provincial powers that has arisen the federal government to which the provinces have ceded a portion of their rights, properties and revenues.<sup>42</sup>

Loranger deals briefly with the role of the Imperial government in the making of this "federal compact." Here he states in its most simple form the fundamental contention of these who subscribed to the provincialist version of the compact. "The Confederation of the British provinces," he concluded, "was the result of a compact entered into by the Provinces and the Imperial parliament, which, in enacting the British North America Act, simply ratified it."<sup>43</sup>

Much could be said about the historical and legal claims that are made in the Loranger version of the compact theory, but in the

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41. T.J.J. Loranger, Letters upon the Interpretation of the Federal Constitution known as the British North America Act (1867) (Quebec, 1884), v.

42. Ibid., 7.

43. Ibid., 61.





context of the developing theory of provincial rights in the 1880's, two points seem especially important. In the first place, Loranger was concerned with, and only with, the compact of the provinces. While he makes reference to Quebec's special interest in provincial autonomy, he nowhere suggests that Quebec's position in the compact is any different from that of any other province. Indeed, what he really was advocating was that Quebec should join Ontario in the campaign against the federal government. There is, in short, not even a hint of the idea of a compact of cultures. Secondly, what is important about Loranger is that his views were almost immediately taken up by Mercier and the Liberals in the Quebec Legislature.

On April 7, 1884, Honoré Mercier moved the following set of resolutions:

That an humble address be presented to His Honour the Lieutenant-Governor, praying His Honour be pleased to transmit the following Resolutions to His Excellency the Governor-General:

1. That the British North America Act, 1867, was intended, in the opinion of its authors, to have consecrated the autonomy of the Provinces of the Confederation, and that the said act has definitely determined the relative powers of the Federal Parliament and the Provincial Legislatures.

2. That the frequent encroachments of the Federal Parliament upon the prerogatives of the Provinces are a permanent menace to the latter; and, that this House, justly alarmed by these encroachments, deems it to be



its duty to energetically express and to firmly proclaim its autonomy as established by the Federal Act.<sup>44</sup>

The debate which followed upon this resolution, and upon the resolution later proposed as a substitute by the Government, offers a complete catalogue of the autonomist arguments in Quebec. For the most part they differed very little from those that had been heard in Ontario for many years.

Mercier's opening speech was not much more than an explanation of the views put forward by Loranger the previous year. Indeed Loranger's views, which were quoted at length, provided almost the entire basis of the Liberal case. And where Mercier was not repeating Loranger, he was drawing his examples from Ontario. He concluded his appeal by remarking, "En face de l'énergique revendication des droits provinciaux que font nos provinces-soeurs, resterons-nous plus longtemps silencieux, nous les représentants du peuple de la province de Québec?... Fasse le ciel que, cette fois-ci, l'esprit de parti n'étouffe pas la voix du patriotisme, la voix du devoir."<sup>45</sup>

To this rhetoric, Taillon, the Premier, replied that everyone was agreed on the necessity of maintaining the autonomy of the provinces, but there was marked disagreement on the means of doing so. He did not like the accusatory tone of Mercier's motion and promised that later in the session there would be a better opportunity presented to members who wished to state their views on the autonomy question.<sup>46</sup>

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44. Journals of the Legislative Assembly, Quebec, 1884, 56.

45. Débats, 1884, 410-11.

46. Ibid., 413.





Several other points of interest were made in this first debate. Mr. Irving, a Liberal who supported the Mercier motion, nevertheless presented the most effective refutation of the Loranger-Mercier view of the constitution. He maintained:

Je ne suis pas d'accord avec l'honorable député de St-Hyacinthe. (M. Mercier) dans toutes les opinions qu'il a exprimées. Je repousse même absolument quelques-unes de ses prétentions. Il a exposé une théorie à laquelle je ne puis me rallier au sujet de l'origine des pouvoirs des provinces. Il ne faut pas se méprendre de la sorte sur cette partie de la question. La seule et unique base de notre constitution, c'est l'Acte de 1867. Le parlement fédéral dans notre organisation est l'autorité suprême. Tous les pouvoirs sont au gouvernement fédéral. Voilà le point de départ. Cette autorité suprême, pour des raisons de bonne administration et des nécessités politiques, est déléguée en partie à des corps spéciaux créés en vue de l'exercice de ces pouvoirs délégués. Il n'y a donc d'exceptions que le droit spécialement attribué aux provinces, de là, à mon avis, nécessités de défendre les droits fédéraux comme les prérogatives des provinces.<sup>47</sup>

Unfortunately very little of the debate was devoted to a serious consideration of these two conflicting viewpoints. For the most part the Liberals, who dominated the debate, were satisfied to restate the Loranger thesis, though the occasional speaker introduced the "national" question. M. Lemieux supported the resolution on the

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47. Ibid., 414.





ground that it was necessary for "la défense de nos prérogatives provinciales et en même temps nos prérogatives nationales."<sup>48</sup>

M. Turcotte connected the attacks on provincial autonomy with "ces attentats répétés à notre religion et à notre nationalité."<sup>49</sup> On the Conservative side these remarks were answered in variety of ways. M. Nantel was particularly resourceful. He pointed out that while Mercier's resolution claimed that provincial autonomy was consecrated in the constitution, Mercier had opposed Confederation in 1867 claiming exactly the opposite. He then went on with enthusiastic partisanship to indicate that while the Liberals now posed as the defenders of provincial autonomy, it was those same Liberals who at Ottawa had called upon the federal government to infringe upon New Brunswick's autonomy in the school issue.<sup>50</sup> And so the debate continued until the resolution was defeated.

Nevertheless it is clear that the autonomy question was one of political significance in Quebec in 1884. This is underlined by the fact that within two weeks after the defeat of the Mercier resolution, a second debate took place. The occasion was a resolution on the same subject, more mildly worded than the Mercier motion, and moved by two Government supporters. The resolutions declared:

Resolved that an humble address be represented to His Honour the Lieutenant-Governor praying His Honour be pleased to transmit to His Excellency the Governor General the following resolutions:

1. That the success of the Confederation and the

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48. Ibid., 454.

49. Ibid., 455.

50. Ibid.



prosperity of the Provinces of Canada depend in great measure upon the care which the Parliament of Canada and the Provincial Legislatures take to confine themselves within the limits of their respective powers.

2. That it is the duty of the Legislature of this Province to resist energetically any attempt tending to attack the rights of the Province of Quebec or its autonomy.

3. That this House while desirous of maintaining the harmony which should exist between the Parliament of Canada and the Legislature of this Province, will be prepared to give a cordial and energetic support to the Government of the Province of Quebec whenever it is necessary to assert the rights of the Province as guaranteed by the Confederation Act.<sup>51</sup>

This resolution differed from the earlier one in that it made no assertions about past infringements upon the autonomy of the province, but simply called for a confession of faith in the idea of autonomy.

The debate which followed the introduction of this second resolution was, in most respects, a repeat performance. Its main difference was that since it was a government-approved resolution, it gave the Conservatives an opportunity to express their view more freely. M. Duhamel, the sponsor of the resolutions, set the tone of the discussion with his remark that "L'autonomie de la Province

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51. Journals of the Legislative Assembly, Quebec, 1884, 100.





de Québec, c'est l'existence nationale." But he indicated that Quebec did not have to depend only upon the provincial legislature for the defence of its rights. "Il y a assez de patriotisme dans la députation québécoise au parlement fédéral et dans celle de Québec et son gouvernement" to defend the province's autonomy.<sup>52</sup> This, of course, had been the view of the Quebec Conservatives at Confederation, and it was still apparently an acceptable argument in 1884.

A backbencher, M. St. Hilaire, made the closest identification of the interests of the province and the interests of the "nation," arguing, in effect, that "Québec n'est pas une province comme les autres." He summed up his position as follows:

La position exceptionnelle de notre province dans la confédération, par suite de la différence qui existe dans notre langue, nos lois, notre religion exige que nous jouissions de cette autorité absolue et indépendante pour maintenir intacte, vivace au milieu d'une population hétérogène notre nationalité canadienne-française qui nous est si chère. C'est pour cela que la confédération a été établie; car sans cette nécessité de l'autonomie pour la Province de Québec, nous aurions depuis 1867 une union législative.<sup>53</sup>

The position of the Government in this debate was simple. It would support the resolution because it recognized that provincial autonomy was guaranteed by the British North America Act. Moreover,

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52. Débats, 1884, 642-3.

53. Ibid., 644.



Government speakers insisted that the Opposition had failed to prove any infringements upon the province's rights had taken place, and that, in any case, the place to prove the existence of infringements was not in the Legislature but in the courts.<sup>54</sup>

The two debates in 1884 provide the basis for some general remarks on the subject of the idea of provincial rights as it had developed in Quebec in the years since Confederation. In the first place it is worth noting again that the doctrine of provincial rights was a weapon which the Liberal opposition was attempting to use to undermine the Conservative ascendancy in local politics. Secondly, the very general nature of the debate is significant. Unlike the controversy in Ontario, and also in Nova Scotia and Manitoba, where specific issues were in question, the debate in Quebec related to an abstract proposition. When the proposition was made more concrete, as it was the following year, then the debate assumed an air of greater reality. Thirdly, it seems apparent that while provincial autonomy was something no politician in Quebec could afford to oppose outright, it was nevertheless quite possible to defend the status quo, for the resolutions passed in 1884 were really nothing more than that. Finally, it is perhaps most significant to note that while the debate contains many references to provincial autonomy as the first line of defence for the French-Canadian nationality, there was never any suggestion that a conflict might exist between provincial autonomy and the rights of the minorities outside Quebec. Nor was there any suggestion that Confederation had been a cultural compact guaranteeing the rights of French Canadians and Roman Catholics in all parts of

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54. Ibid., 779-800





the country. It is in the light of these general remarks that the debate over the fate of Louis Riel becomes more significant and its outcome more understandable.

As is well known, the Northwest Rebellion, the trial, and particularly the hanging of Louis Riel caused an explosion of sentiment in Quebec. The importance of these events is so great that they are usually taken as a turning point in the history of the two political parties in Canada, and in Confederation itself. A reading of the debates on the Riel question in the Legislature of Quebec suggests two important observations on the subject of provincial autonomy. First, the very fact that the Riel question was debated in a provincial Legislature illustrates the way that provincial autonomists were willing to "infringe" upon questions that were essentially federal. Moreover, it is important to note that the moral French-Canadian politicians seem to draw from the Riel affair, is not that provincial autonomy is a poor defence of French Canada's position in Confederation, but rather that Quebec is the only place where French-Canadian rights are secure. The tendency already apparent in the 1884 debates to identify French Canada with Quebec is now exploited to the full. Mercier, who had kept this theme muted in his 1884 speeches, was now prepared to advance it to the head of his list of arguments for autonomy. His theme was now that Riel's death represented the death of French Canada's influence in Confederation outside Quebec; and that, therefore, French Canadians had a duty to cease their fratricidal quarrels and unite in a crusade to preserve the nation in Quebec from encroaching federal power. "Nous sentions," he declared, "que le meurtre de Riel était une déclaration de guerre





à l'influence canadienne-française dans la Confédération, une isolation du droit et de la justice. Voilà pourquoi la question est nationale; c'est parce que si Riel a été pendu au gibet de Régina, c'est parce qu'il était un des nôtres."<sup>55</sup> Speaking of the promises of Confederation in the Legislature, he declared, "Nous avons été bien trompés, nous avons été bien trahis!"<sup>56</sup>

For the purposes of this study the politics of Mercier's Parti national, his alliance of Liberals and dissident Conservatives, is unimportant. But nothing is more revealing of the interpretation which he now placed on provincial autonomy than the electoral programme he issued at the end of June 1886, in preparation for the coming election. Its essentials were twofold. The first theme was an attack on the unholy alliance which existed between the provincial Conservatives at Quebec City and the federal Conservatives at Ottawa which "prépare la ruine de notre indépendance provinciale." The second point of emphasis was that party division in Quebec made the defence of the province's rights impossible and that, therefore, patriotism required a national party. "C'est la division, née de l'esprit de parti qui a fait mal; c'est l'union née de patriotisme qui le réparera." While the programme called for a variety of reforms, it was nevertheless the autonomist issue that was the key to the "national" programme.<sup>57</sup>

While the nationalist aspects of Mercier's attitude were clearly underlined in 1885-6, it would be wrong to place all the emphasis on

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55. Charles Langeletier, Souvenirs Politiques (Québec, 1909), 1,254.

56. Débats, 1886, 902.

57. La Patrie, 1 juillet 1886.



this aspect of his doctrine of provincial autonomy. It is important to keep in mind that Mercier never suggested French Canadians alone were the defenders of autonomy; they would find allies both in Quebec and in the English-speaking provinces.<sup>58</sup>

Indeed to see Mercier simply as a nationalist would be to mistake a politician for an ideologue. His nationalism was doubtless sincerely felt; doubtless also he recognized it as a potent political weapon. But in his battle for power and provincial rights, he was prepared to give assistance to his federal Liberal friends, and also to call upon the leaders of other provinces to form a united front against federal centralization. Certainly this latter intention lay behind the announcement in the 1887 Speech from the Throne that the Quebec Government had taken the initiative in calling a conference of Provincial Premiers. And even here, Mercier's pragmatism may be discerned. Despite all the earlier discussion of the abstract question of provincial autonomy, there is not one suggestion in the Speech from the Throne in 1887 of constitutional reform.<sup>59</sup> The whole basis of Quebec's grievance is represented in a return to an earlier theme: the need for better financial terms. Mercier thus appears much more a man of his times than as a prophet of some new constitutional order.

Before I turn to the 1887 Interprovincial Conference, some notice must be taken of the developing provincial rights sentiment in Nova Scotia and Manitoba.

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58. See Mercier's speech in 1886, printed in J. O. Pelland, Biographie, Discours, Conférences etc. de L'hon. Honoré Mercier (Montréal, 1890), 160 et seq.

59. Débats, 1877, 10-11





In at least one important respect the sources of grievance against the federal government and against Confederation itself in the two outlying provinces of Nova Scotia and Manitoba were more serious than those of the two powerful central provinces. The grievances of these provinces grew out of a belief that certain aspects of national economic policies worked to their detriment. In Nova Scotia's case it was the tariff; Manitoba objected to federal railway policy. Since these two small provinces were much weaker in their numerical representation at Ottawa than the populous central provinces, their capacity to bring political pressure on the federal authorities was much more limited. That fact perhaps helps explain the extreme lengths to which they were prepared to go in attempting to win redress for their grievances. It is characteristic of the provincial rights struggle that, while both provinces had complaints which were basically economic, these complaints were translated into constitutional terms.

The case of Nova Scotia is well known. The roots of the problem lay partly in the fact that even at Confederation the economy of Nova Scotia was moving into a time of crisis with the passing of the great age of the sailing ship. This initial difficulty was greatly intensified by the depression of the 1880's. In the face of apparently desperate economic conditions, Nova Scotians turned their wrath once again against the nation which they could always say had been foisted upon them. In 1886 the Liberal Government of W.S. Fielding, in preparation for a coming election, presented the Legislature of the province with a lengthy resolution calling for a repeal of the Union, and inviting the other maritime provinces to



join it in a Maritime Union. The heart of the resolution, which passed by a vote of fifteen to seven read as follows:

That after nineteen years under the Union, successive governments have found that the objections which were urged against the terms of Union at the first apply with still greater force now than in the first year of the Union, and the feeling of discontent with regard to the financial arrangements is now believed by this House to be more general and more deeply fixed than ever before;

That Nova Scotia, previous to the Union, had the lowest tariff, and was, notwithstanding, in the best financial condition of any of the Provinces entering the Union;

That the commercial as well as the financial condition of Nova Scotia is in an unsatisfactory and depressed condition;

That it seems evident that the terms of the "British North America Act", combined with the high tariff and fiscal laws of the Dominion, are largely the cause of this unsatisfactory state of the finances and trade of Nova Scotia;

That there is at present no prospect that while the Province remains upon the existing terms of Union a member of the Canadian Confederation, any satisfactory improvement in the foregoing respects is at all probable.<sup>60</sup>

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60. Journals and Proceedings of the House of Assembly of the Province of Nova Scotia, 1886





With this bill of particulars as ammunition, Fielding faced his electors and won thirty-five of thirty-eight seats. Nevertheless his reluctance to act immediately on the resolutions was widely interpreted as a willingness to accept much less than secession. Indeed more than one Nova Scotia newspaper argued that not secession, but rather reciprocity with the United States was what was really on Fielding's mind. "Repeal," the Nova Scotian argued, "means reciprocity, and reciprocity means two dollars per barrel more for mackerel, one dollar per barrel more for herring, fifty cents per quintel more for cod fish...."<sup>61</sup>

Whether the repeal cry was merely an election slogan or a lever to force the federal government to alter its tariff policy, or more likely both, the one thing that is clear is that there was no rush to act upon it. Fielding explained his delay on the grounds that a federal election was in progress and that a new government at Ottawa might put an entirely new colour on the matter. But that election saw the electors of Nova Scotia, who had earlier been hot on the path of repeal, return thirteen Conservatives and only eight Liberals. The voice of Nova Scotia was obviously less than clear. What saved Fielding from taking any further definite steps was Mercier's invitation to participate in a conference of the provinces late in 1887.

Like Nova Scotia, Manitoba found by the 1880's that federal developmental policies were not tailored to the province's needs. Specifically Manitoba objected to federal government to the Syndicate which agreed to construct the transcontinental railway contained a

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61. Nova Scotian, February 5, 1887.





clause giving the company an effective monopoly in western Canada. The purpose of the clause was to guarantee that no railway lines would be built running from points in Canada, west of the Great Lakes, to the United States. From one viewpoint the policy was obviously sensible: traffic was likely to be so small in the west that the C.P.R. would need to have the right to carry it all if even a small profit was to be made. On the other hand, Manitoba farmers, anxious for the cheapest modes of transportation, felt no strong reasons for making the C.P.R. economically viable. It is not clear whether the monopoly clause was to prohibit all railway building in the west, or merely those lines which would siphon off traffic to the United States. However, when in 1882 the federal government disallowed certain railway charters passed by the Manitoba legislature, it became clear that it would be impossible for Manitoba to have an independent railway policy. From this point onward, throughout the 1880's there was an almost constant conflict between Winnipeg and Ottawa over the federal power of disallowance.

In the first years of the struggle the Norquay Government, nominally a non-partisan administration, attempted to ride out the storm of protest over disallowance by working to obtain better financial terms for the province. However, the provincial rights issue involved in the disallowance question soon became the chief political issue in the province. Indeed provincial rights was the principle on which the first party division in Manitoba history took place. Thomas Greenway, an Ontario Liberal who had moved to Manitoba, quickly took up the provincial rights issue and by the end of the 1880's had succeeded first in driving a wedge between Norquay and



the federal Conservatives, and then in defeating him. Though Norquay carried on a valiant battle against the monopoly clause, it was Greenway who in the end benefited from its repeal. It was also Greenway who then went on to use the provincial rights cry to defend his province's decision to abolish separate schools in 1890.<sup>62</sup>

Ottawa's view, in the dispute over railway disallowance, was that the federal government had the right to use its veto power in order to ensure that national policies were in no way hampered by provincial policies. Sir Charles Tupper put the case bluntly, and in a way that was certain to annoy Manitobans, when he stated in 1883:

I say that the interests of this country demand that the Canadian Pacific Railway should be a success; and the man who does any act by which that success is imperilled takes a course which is hostile to the interests of Canada. But somebody may ask what about the interests of Manitoba? Are the interests of Manitoba and the Northwest to be sacrificed to the policy of Canada? I say, if necessary - yes.<sup>63</sup>

The result of this policy, not unnaturally, was the development of a sectional discontent based on the suspicion that the east acted upon the assumption "that they had bought us and that in some respects we were their colony"<sup>64</sup> By 1886 Norquay found that with the Liberals cutting support from under him with the provincial rights cry, it

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62. James A. Jackson, The Disallowance of Manitoba Railway Legislation in the 1880's (unpublished M. A. thesis, University of Manitoba, 1945).

63. Canada, House of Commons Debates, 1883, 971.

64. Cited in Jackson, Disallowance of Manitoba Railway Legislation, 44.





was politically necessary for him to break his ties with the federal Conservative party and take up an autonomist stance himself. It was a dangerous course which he chose. It was to bring his eventual down fall, for it meant that he made enemies of his former friends at Ottawa, without winning the support of the Liberals in Manitoba. But before his defeat came, he gave clear evidence of his revolt against the federal government and its policies by accepting Mercier's invitation to attend the Interprovincial Conference. He was the only non-Liberal premier there.

Thus, by the end of the 1880's the majority of the provinces were in full revolt against the paternalism of the federal government. Each had its own reason, though in every case, except that of Ontario, these were directly connected with financial problems. Each of the discontented provinces, with the exception of Manitoba, expressed its dissatisfaction by electing the Liberal party to office; and in their battle they allied themselves with the federal Liberal party, which made provincial rights one of its leading policy positions. The climax of the revolt came with the meeting of the Interprovincial Conference in the autumn of 1887.



Two provinces, British Columbia and Prince Edward Island, rejected the invitation to attend the Interprovincial Conference. The attitude of these two provinces is explained partly by the Conservative complexion of the ruling politicians, but more by the fact that both had recently received special treatment from the central government. What is particularly interesting here is that, since each of these provinces had entered Confederation late, their terms of union had been somewhat unusual. They were, in effect, provinces "pas comme les autres."

British Columbia's entry into the union in 1871 was arranged through the granting of special terms including an especially generous federal subsidy rate, and the promise that a transcontinental railway would be constructed. On this latter point, clause 11 of the Act of Union guaranteed that the railway would be started within two years and be completed in ten. While the federal government insisted that the ten-year guarantee really meant "as soon as possible," and that the whole agreement was based on the understanding that taxes would not have to be increased, British Columbians were inclined to place a more fundamentalist interpretation on the terms of the agreement.<sup>65</sup>

When the Mackenzie Government took office in 1873, the first part of the agreement had already been broken, for railway construction had not yet been started. One of the primary objectives of the Liberal Government, whose members had previously been highly critical of the terms of union, was to have clause 11 altered. It was British

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65. Margaret Ormsby, British Columbia: A History (Toronto, 1958), 232-58.





Columbia's intention that the terms should be fulfilled to the last letter. Mackenzie's first move was to despatch a representative to Victoria to negotiate with the Walkem Government. The mission was fruitless, though it confirmed Walkem in his belief that the Liberals were untrustworthy and intent upon breaking the agreement with British Columbia. In an attempt to check the federal government, Premier Walkem appealed to the Imperial authorities. British Columbia's appeal was received with some sympathy in London: Lord Carnarvon, the Colonial Secretary, offered to mediate the dispute. Mackenzie was extremely irritated at the Imperial government's failure to support completely the federal government's position. Nevertheless after the Governor General, Lord Dufferin, pressed Mackenzie to accept the Colonial Secretary's offer, the federal government agreed.

The details of the Carnarvon terms are unimportant. What is important is that they represented a modification of the original term of union. But even that proved unacceptable to a powerful wing of the Liberal party. By 1875 Mackenzie was finding it more necessary to come to terms with Edward Blake than with British Columbia. Blake returned to the cabinet as Minister of Justice, but he insisted that the Carnarvon terms were unacceptable because of the expenditures involved, and also because he resented the interference of the Imperial authorities. The result was a long, complicated struggle with the Governor General, and a failure to satisfy British Columbia, where secessionist sentiment began to reach serious proportions.<sup>66</sup>

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66. J. A. Maxwell, "Lord Dufferin and the Difficulties with British Columbia, 1874-7, Canadian Historical Review, XII, 4 (December 1931), 346-90; Margaret Ormsby, "Prime Minister Mackenzie, the Liberal Party and the Bargain with British Columbia," Ibid., XXVI, 2 (June 1945), 148-74.





The return of the Conservatives to office in the general election of 1878 prepared the way for the appeasement of the Pacific coast province. Macdonald was, of course, clearly committed to the construction of the C.P.R. with all due haste. The Conservative Prime Minister was also willing to adopt other methods of quieting British Columbia's discontents. In 1880 the province was given an outright grant of \$250,000 for the construction of the dock at Esquimalt. Four years later, after the provincial government had bungled the construction of the dock, Ottawa assumed responsibility for its operation and also granted a subsidy for the construction of a railway from Esquimalt to Nanaimo. Since the C.P.R. was brought to completion in these years, British Columbia became, temporarily, a satisfied province.<sup>67</sup> "The spoilt child of Confederation"<sup>68</sup> thus had no reason to attend Mercier's conference.

Prince Edward Island's position was similar to that of its fellow province on the west coast. In 1873, after six years of intermittent negotiations, political crises and mounting financial difficulties, Prince Edward Island succumbed to the temptations of Canada. Like British Columbia, the late entrance allowed Prince Edward Island to bargain for and to receive special terms. The financial arrangements were generous, designed to permit the province to solve its chief difficulties: absentee landownership and debt-burdened railways.<sup>69</sup>

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67. Maxwell, Federal Subsidies, 90-3.

68. Ormsby, British Columbia, 258

69. F.W.P. Bolger, Prince Edward Island and Confederation, 1863-73 (St. Dunstan's University Press, 1964).



Again like British Columbia, Prince Edward Island's peculiar geographical position presented a special problem and not one that could be solved by a railway. Therefore the Dominion agreed to establish "efficient steam service for the conveyance of mails and passengers between the Island and the mainland of the Dominion winter and summer thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion."<sup>70</sup> This unusual clause naturally became the source of much subsequent disagreement for, literally interpreted, the phrase "continuous communication" could cause the federal government serious embarrassment. By the 1880's Prince Edward Island politicians had discovered that strict interpretation was a useful way of obtaining further special treatment from Ottawa.

In 1881 the provincial Legislature protested that the screw steamer which maintained service between the Island and the mainland for all but about two months of the year was inadequate. The Sullivan Government demanded not only better "continuous communication," but also compensation for past inadequacies. At first Ottawa chose to ignore the demande. A direct appeal to London from Charlottetown brought no results. Within a few years, however, Ottawa made a series of minor financial concessions to the province. But even these failed to shore up the province's sinking finances. In 1887 Sullivan appealed again to Ottawa, this time emphasizing his political

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70. Dominion Statutes, 1873, 1st Session, xii.





friendship with the federal Conservatives. The plea met with sympathy; \$20,000 was added to Prince Edward Island's annual subsidy. Two years later Sullivan went to the bench.<sup>71</sup> The chair provided for Prince Edward Island at the Interprovincial Conference remained empty.

Thus, though special "compacts" had been devised to bring British Columbia and Prince Edward Island into Confederation, the federal government subsequently managed to undermine the contractual principle by timely concessions to provincial demands. It is, then, especially interesting, indeed ironical, that the two provinces which had made specific agreements before entering the federal union cast a cold eye on the proceedings of the Interprovincial Conference called in 1887 to re-examine the terms of the "federal compact."

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71. Maxwell, Federal Subsidies, 70-6.



## Chapter IV

### THE TRIUMPH OF PROVINCIAL RIGHTS

Nothing better indicates the assumption that underlay the thinking of the premiers who met at Québec City on October 20, 1887, than a passage from the welcoming address by the representative of the Province of Québec. The address noted:

The kind manner in which you have accepted the invitation tendered you shows conclusively that you appreciate all the importance of this Interprovincial Conference, the first which has been held since 1864, which was attended by distinguished statesmen from Upper and Lower Canada, New Brunswick and Nova Scotia and whose resolutions served, in some respects, as the basis of the Union Act of 1867.<sup>1</sup>

It was, in short, to be a new conference on the terms of union, in direct succession to the Charlottetown and Quebec Conferences, called to reassess the decision of the earlier gathering. But, plainly, it was a little difficult to carry this facade too far. In the first place only five of the seven provinces had agreed to attend. British Columbia and Prince Edward Island, ruled by Conservative administrations, had refused to attend. All those attending, except Norquay, were Liberals, and even Norquay could hardly be classed an orthodox Conservative by 1887. The federal government, which had been invited to the Conference, chose to

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1. Minutes of the Interprovincial Conference Held in Quebec City from the 20th to the 28th of October, 1887, 11, italics added.

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ignore it. Therefore from the outset the Conference had large difficulties in representing itself as a "second Quebec Conference," and after it was over Macdonald had little difficulty in branding it as a parley of Liberal chieftains.<sup>2</sup>

Despite these limitations, the Conference was an extremely important event in the evolution of provincial rights theory and practice. For the first time, it brought together all the leaders of provincial discontent. But since each province had a peculiar grievance the problem which the Conference faced was the construction of a platform upon which they could stand united. Even a quick glance at the twenty-two resolutions accepted by the five premiers indicates the method by which this unity was achieved. The resolutions fall nicely into two general categories: the claims for better financial terms and wider revenue resources for all the provinces; and secondly, the demands for constitutional changes aimed at limiting the powers of the federal government. There can be little doubt that most of the demands for constitutional reform were designed to meet the views of Mowat and Ontario, the one province that was satisfied with its financial position. Equally it cannot be doubted that most of the suggestions in the field of finances came from Quebec. Of course, Manitoba, too, was interested in both constitutional reform and better terms, while the two maritime provinces were chiefly concerned about the subsidy question and, probably, trade policy.

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2. Creighton, John A. Macdonald: The Old Chieftain, 488.





The resolutions which the Conference accepted after a week of discussions reflected clearly the various provincial discontents which had emerged over the two previous decades. In addition to demanding an upward revision of federal subsidies, the resolutions called for the abolition of the federal power of disallowance; a better, but unspecified, method of determining the constitutionality of federal and provincial legislation; Senate reform giving the provinces the right to appoint half the Senators and reducing the term of office to four years; abolition of the federal power to place local works under federal jurisdiction; provincial control of the franchise; and the recognition that all public lands belonged to the provinces. In keeping with the constitutional theory of the conferring premiers, these resolutions were to be presented to the provincial legislatures for approval. <sup>3</sup>

Three special resolutions of the Conference deserve particular attention. First, Nova Scotia, doubtless still worried about its embarrassing repeal resolution, asked that the minutes record that Nova Scotia did not want any misunderstanding of its position: the acts and resolutions of the Conference were not to be considered as an obstacle to Nova Scotia's right, if necessary, to find a method of achieving "the separation of the Province from the Dominion." <sup>4</sup> Manitoba too, received special recognition. The Conference declared its "sympathy with the people and legislature of Manitoba in their struggle for the constitutional rights of

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3. Minutes of the Interprovincial Conference, 1887, 20-6..

4. Ibid., 19.



their Province." <sup>5</sup> This resolution, of course, referred to Manitoba's demand to be permitted to charter local railway lines. Finally, despite its professions to the effect that it had no intention of expressing hostility to the federal government or of interfering in federal affairs, the Conference called for the establishment of unrestricted reciprocity between Canada and the United States. <sup>6</sup> There was no mention of the fact that trade and commerce fell within the federal jurisdiction, or that unrestricted reciprocity was becoming a major plank in the platform of the federal Liberal party.

In terms of immediate results the Conference was a failure. Macdonald refused to have the federal government represented, and he later rejected a suggestion that he should meet the premiers to receive their resolutions officially. <sup>7</sup> For the immediate future Macdonald's tactics proved successful. Indeed, in pressing the unrestricted reciprocity resolution issue, the provincial premiers provided Macdonald with a powerful weapon with which to strike the Liberal party in the election of 1891: the charge of annexationism.

Nevertheless the Conference cannot be written off as a total failure. It had brought together a group of Liberal leaders, three of whom later became federal cabinet ministers, and the ground was thus prepared for the last assault in 1896 upon the Conservative's federal ascendancy. Moreover, the Conference

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5. Ibid., 27.

6. Ibid., 27.

7. Macdonald to Mowat, December 3, 1888, in Pope, Correspondence of Macdonald, 433.





provided a practical expression of the provincial rights theory of the constitution. This theory was presented in its full-blown form by the Toronto Globe, the organ of the Ontario Liberal party, in its comment on debate on the resolutions of the Conference in the Ontario Legislature. It wrote:

The Confederation has its origin in a bargain between certain Provinces, in which bargain the Provinces agreed to unite for certain purposes and to separate or continue separated for others. The Provinces party to the bargain were at the time of the compact independent nations in the sense that they enjoyed self-government subject to the Imperial veto upon their legislation, to the Imperial appointment of their Governor-General, to the Queen's command of the forces. The Dominion was the creation of these Provinces; or in other words, was created by the British Parliament at the request of the Provinces. The Dominion being non-existent at the time it was made, was plainly not a party to the bargain. It cannot, then, be a party to a revision of the bargain. The power to revise the created body must lie in the hands of those who created that body. The overwhelming majority of those who created the Dominion being in favour of the revision of the Confederation Compact, the British Parliament is not entitled to look any further or to consult the wishes of the Dominion Government



in the matter. The resolutions of the Quebec Conference, after they have been approved by the Legislature representing the Provinces party to the Conference, will therefore furnish the British Parliament exactly the reasons and the authority for a revision of the Confederation pact as was furnished to and acted upon by the same body twenty-two years ago and resulted in the British North America Act being passed.<sup>8</sup>

It would be difficult to find a more complete expression of the provincial rights viewpoint than this one stated by the anointed organ of Ontario Liberalism. It is, however, worth pointing out that despite the consistency with which the editor pursued the implications of the compact theory, his very consistency landed him in almost immediate difficulties. Nothing could change the fact that the 1887 Conference was not a Conference of all the provinces. The editor was therefore forced to give up the unanimous consent implications of the compact theory in favour of an "overwhelming majority" theory. But that must raise the question: when is a compact a compact and when is it majority rule? That such a question can even be raised once more indicates the ambiguity of the compact theory and the undefined nature of the principles of provincial rights.

While it is easy enough to point out the vagueness of the compact theory and its twin, provincial rights, it is impossible

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8. The Globe, March 9, 1888.



to deny that after 1887 it apparently became an increasingly acceptable doctrine. There are several ways in which this conclusion may be illustrated. One may note the agreement by the Macdonald Government in 1888 to revoke the monopoly clause in the C.P.R. charter, and to revise its position on the question of disallowance. As Jackson argues, "the policy of disallowing solely on the grounds of public policy was abandoned in 1888".<sup>9</sup> This may be a slight over-simplification, but as La Forest's study shows, the period of widespread disallowance for what were essentially policy rather than strict constitutional purposes was certainly over.<sup>10</sup> While it is dangerous to generalize from a specific issue, especially when the issue is as unusual as the Jesuit Estates Act, it is nevertheless clear from the position taken by both the Government and the Opposition in that debate that the federal power of disallowance was likely to be used only with extreme caution in future. "No Government can be formed in Canada," Macdonald said during that debate in 1889, "either by myself, or by the Hon. Member who moves this resolution (Mr. O'Brien) or by my Hon. friend who sits opposite (Mr. Laurier) having in view the disallowance of such a measure."<sup>11</sup> This, of course, does not suggest that the power of disallowance was never to be used again, or that it had ceased to exist. It does suggest, however, that the Macdonald who looked upon the provinces as municipal corporations in 1868 had come to realize that the political

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9. Jackson, Disallowance of Manitoba Railway Legislation, 135.

10. La Forest, Disallowance and Reservation, 57-61.

11. Canada, House of Commons Debates, 1889, 908.





power of the provinces was much greater than he had either intended or expected.

The growing recognition of the power of the provinces can be further illustrated in a number of other matters. While it will be necessary to return to the Manitoba School Question in the later discussion of the compact of cultures, several observations are relevant here. From the beginning of that controversy in 1890 to its settlement in 1897, there was, to say the least, a marked reluctance on the part of federal politicians, Conservative and Liberal, to take any action which might be represented as an interference with provincial rights. It is true that the Conservative Government passed a remedial order, which was defied by Manitoba, and then attempted to pass remedial legislation. But the reluctance with which this action was finally taken, and the party's defeat at the polls in 1896 may be taken, in part at least, as an indication of the strength of provincial rights sentiment. It must, however, be emphasized that the Manitoba School Question was much more than a simple question of provincial versus federal jurisdiction. It was complicated by cultural and religious factors which were probably much more important - though it is typical that much of the argument was couched in terms of constitutional rights and wrongs.<sup>12</sup> The Liberal position throughout the debate was never clearly or simply a defence of provincial rights, but the party's victory in 1896 brought to power the party which had made the rights of the provinces one of its chief policies. Laurier

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12. J.T. Saywell, The Canadian Journal of Lady Aberdeen, (Toronto, 1960), xxxiii - l xxxiii.



himself was certainly never wholly committed to the view that provincial rights took precedence over minority rights, but in practice this was what his victory in 1896 and the subsequent Laurier-Greenway settlement represented.<sup>13</sup>

After 1896 provincial rights and the compact theory attained a position close to motherhood in the scale of Canadian political values. It would be difficult to find a prominent politician who was not willing to pay at least lip-service to the principle of provincial rights and its theoretical underpinning, the compact theory. A few of the more interesting examples may be worth citing.

There is, for example, the view of Sir Charles Tupper, Macdonald's alter ego for so many years and the sponsor of the remedial bill in 1896. In 1899 when Laurier attempted to reform the Senate by having reform resolutions passed through the provincial Legislatures, Tupper appealed to the compact theory to block the move. Writing to the leader of the Conservative party in the Ontario Legislature he noted: "The Imperial Parliament will never be a party to the breaking up of a compact upon which Confederation was formed unless the House of Commons and Senate both agree to the resolutions and that resolution has been before the people and the legislatures subsequently elected have endorsed the proposal."<sup>14</sup> The remark causes one to wonder just a little about Sir Charles' memory

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13. See H. Blair Neatby, *Laurier and a Liberal Quebec* (unpublished Ph.D. thesis, University of Toronto, 1956), 87-136.

14. P.A.C., Tupper Papers, Vol. II Tupper to Whitney, March 22, 1899.





of the sanction which the people of Nova Scotia gave to the original "compact". At any rate the plebescitary implications of Tupper's concept of compact adds yet another complication to the apparently endless variations of the theory.

On the views of the Imperial Government, however, Tupper was apparently very close to the mark. When Laurier informed the Colonial Secretary of the Canadian Government's desire to modify the composition of the Senate, Joseph Chamberlain replied in words that could have been written by Oliver Mowat or Judge Loranger. "Any change in such a Constitution as that of Canada," remarked, "is of course a matter of gravest importance, involving great (sic) responsibility on the Imperial Parliament - the greater in that the present constitution is the result of a pact or treaty between the self-governing Colonies which now constitute the different provinces of the Dominion, the terms of the compact being placed under the guarantee of an Imperial Act."<sup>15</sup> To Chamberlain's reputation as an Imperial "centralizer," it might be well to add a footnote on his views as a Canadian "decentralizer." That the same views triumphed in the Judicial Committee of the Privy Council is a conclusion that hardly needs documentation at this late date.<sup>16</sup>

The viewpoints of the two political leaders in the first decade of the new century differed very little on the subject of provincial rights. It could hardly be expected that Laurier

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15. P.A.C., Laurier Papers, vol. 103, Chamberlain to Laurier, March 10, 1899.

16. Vincent C. MacDonald, "The Privy Council and the Canadian Constitution," Canadian Bar Review, XLIX, 10 (December 1951), 1021-37.



would hold any other position, given his past and given the composition of his cabinet. His first cabinet contained three premiers who had attended the Interprovincial Conference: Fielding of Nova Scotia, Blair of New Brunswick, and Mowat whom Laurier described as "the most correct interpreter of our constitution that Canada has produced."<sup>17</sup> In a debate in 1907 on the subject of the representation of the provinces, Laurier expressed his view of the constitution in these terms:

Confederation is a compact, made originally by four provinces, but adhered to by all the nine provinces who have entered it, and I submit to the judgement of this House and to the best consideration of its Members, that this compact should not be lightly altered. It should be altered only for adequate cause and after the provinces themselves have had an opportunity to pass judgement on the same.<sup>18</sup>

Near the end of his life Laurier wrote an extensive account of his view of the federal system in response to an article criticizing Confederation for its centralizing characteristics. Laurier made two points which are of particular interest. First he indicated that he disagreed completely with those who held that in a federal system the residual power should rest with the provinces. He wrote:

Je crois bien supérieur notre système qui attribue au pouvoir fédéral tous les pouvoirs non énumérés. Le

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17. Canada, House of Commons Debates, 1903, 1575.

18. Ibid., 1907, 2199.



but du système fédératif est de faire un tout solide d'éléments hétérogènes, tout en conservant à chacun son existence propre, c'est-à-dire, union sans fusion. Le nouvel état sera nécessairement plus solide et plus fort si l'autorité finale est confiée au pouvoir qui unit tous ces éléments. L'idée est encore plus manifeste, si le but de la fédération est de créer une nation nouvelle d'éléments divers et jusque-là séparés en tout.

But he admitted that in his estimation the Confederation scheme had erred in the direction of centralization in one important respect - disallowance. His words are again worthy of quotation:

D'un autre côté, dans la sphère attribuée aux provinces par notre constitution, leur autorité doit être souveraine, et ce principe ne saurait être proclamé trop haut. Sur ce point, tu aurais pu appuyer davantage sur le danger du désaveu. Là se trouve le point noir de la confédération canadienne. Je ne m'explique guère qu'un esprit aussi clair et aussi net que Cartier ait pu y trouver une garantie pour les minorités. Il n'y a que deux minorités dans la confédération canadienne: minorité de race et minorité de religion. Donner au pouvoir central où se trouvent la majorité de race, et la majorité de religion, l'autorité de s'ingérer arbitrairement dans la juridiction attribuée aux provinces, c'est détruire l'indépendance législative des provinces et en faire un leurre et une moquerie. De fait, dans toutes les agitations qui a différentes reprises ont bouleversé





notre jeune confédération, la cause unique reste toujours la même: c'est toujours les tentatives du pouvoir central d'empiéter sur ses prérogatives provinciales. A toutes ces tentatives les Libéraux opposèrent une résistance inflexible et dès l'origine ils se firent les champions de l'autonomie provinciale.<sup>19</sup>

In practice Laurier was not quite so consistent as his theory suggests. He contravened his principles most obviously, it may be argued, in the case of the legislation establishing the new provinces of Saskatchewan and Alberta. Here two points may be made. In the first place, in the matter of the federal government's retention of control over public lands in the new provinces, the Liberals followed the pattern of paternalism set down by the Conservatives in the Manitoba Act of 1870. In 1905 the Conservatives, now in Opposition, attacked the government for this policy.<sup>20</sup>

Secondly, it was argued in 1905 that in including in the Autonomy Bills a section relating to education in the new provinces, the Liberals were once again contravening established principles. But Laurier maintained that in this case the constitution made it quite clear that provincial rights did not take precedence over minority rights. The Conservatives, who in 1896 had upheld Section 93, now attacked Laurier's interpretation of that clause.<sup>21</sup>

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19. Sir Wilfrid Laurier, "Le Fédéralisme," Revue Trimestrielle Canadienne (November 1918), 219-21.

20. Canada, House of Commons Debates, 1905, 1421.

21. Ibid., 1421 et seq.



In the matter of the position of the Lieutenant-Governor, the Laurier Government found itself in an embarrassing and somewhat contradictory position when it became necessary to remove Lieutenant-Governor McInnes in 1900. Though McInnes' supporters in British Columbia shouted loudly about provincial rights, there was hardly any alternative to the dismissal. The case differed from that of Letellier: McInnes and his main supporters were at least nominally Liberals, and in the election preceding the dismissal, the people of the province returned a Legislature markedly unfavourable to this group. Professor Saywell writes of this case: "That Laurier found the principle of dismissal distasteful is undoubted, and only when McInnes left him no alternative did he exercise the power lawfully possessed by the federal government. In 1878 and 1879 Laurier had argued that dismissal was virtually a delegated power, held in trust by the federal government and exercised only upon request, and in 1900 he exercised the power only when he became convinced that the province of British Columbia overwhelmingly demanded it."<sup>22</sup> The fact remains, however, that distasteful or not, in office Laurier found it necessary to exercise a power that was difficult to justify within the strict interpretation of provincial rights.

Nor, of course, did the Liberals in office allow the federal power of disallowance to fall into total disuse. Its use was limited, however, its main application being to attempts

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22. Saywell, Lieutenant-Governor, 256.





by British Columbia to restrict Oriental immigration. The legislation was repeatedly disallowed on the argument that it interfered with Dominion and Imperial interests.<sup>23</sup> When disallowance of a railway charter granted in British Columbia was threatened, the Attorney-General of that province responded with a statement on the constitution which might very well be taken as a summary of the Liberal view, since the legislation was not disallowed. He wrote:

In the early days of Confederation the Dominion executive appear to have been imbued with the notion that the relation between the Dominion and the provinces was analogous to that existing between parent and child, and have acted accordingly. That view of the status of the provinces has been overthrown by a series of Imperial Privy Council decisions which have clearly established that the provinces acting within the scope of their powers are almost sovereign states, and that they are entitled to exercise all the prerogatives of the Crown not conferred upon the Dominion.<sup>24</sup>

Robert Borden, the Conservative leader during the first two decades of the twentieth century, was not prepared to defend all the doctrines of past Conservative administrations. If anything,

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23. La Forest, Disallowance and Reservation, 66.

24. F.H. Gisborne & A.A. Fraser, Correspondence, Reports of the Minister of Justice and Orders in Council upon the Subject of Provincial Legislation, 1896-1920 (Ottawa, 1922), 616.



he was more vocal in his claim to the title of defender of the provinces than Laurier. In 1907, in a debate already referred to, he joined Laurier in affirming the compact theory. He said:

I agree with what has been said by the Right Honorable gentleman regarding the undesirability of lightly amending the terms of our constitution and am inclined to agree with him on the necessity of some consultation with the provinces, although of course all the provinces are represented here. But inasmuch as this is a federal compact which we are asked to vary, it is only right that each province should be consulted and its decision given, in the right of its separate entity.<sup>25</sup>

And, as has already been noted, in the debates on the Autonomy Bills, Borden insisted that Laurier and the Liberals were undermining provincial autonomy in both the lands question and the educational question. In 1907 in his "Halifax Platform," Borden again returned to the charge, contending that the constitution was being twisted out of shape by the Liberals. His platform promised "the unimpaired maintenance of all powers of self-government which have been conferred upon the Provinces of Canada under the Constitution."<sup>26</sup> It may be added that when Borden attained office in 1911, he did not rush to fulfil his promise to restore control of public lands to the western provinces.

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25. Canada, House of Commons Debates, 1907, 2200.

26. The Liberal-Conservative Platform as Laid Down by R.L. Borden, M.P., Opposition Leader at Halifax, August 28th, 1907, 5.



Yet the fact is that during the years after 1896 the relations between Ottawa and the provinces entered an extremely amicable phase. This was doubtless due partly to the fact that the major battles had been won before 1896, and also to the return of prosperity, which eased tempers and raised the level of public revenues. On this point the meeting of the Inter-provincial Conference of 1902 is instructive. The Conference won the approval of all the provinces, though Ontario and British Columbia were unable to attend. Its objects and discussions were devoted almost exclusively to the subsidy question. Indeed its resolutions were largely a repetition of the financial claims set forth in 1887. But perhaps its greatest significance is that the demands for constitutional reform which had been so large a part of the 1887 resolutions were completely ignored.<sup>27</sup>

While the Laurier Government did not respond to the premiers' demands immediately, by 1905 the stage was set for a new round of better terms based on the 1902 resolutions. It has been suggested that the strongest impetus to this new subsidy arrangement was the internal political revolution that took place in Quebec in 1905 when Lomer Gouin replaced S.-N. Parent as premier. Perhaps in order to stabilize Gouin's position, Laurier agreed that new financial terms should be worked out. This was achieved at a Dominion-Provincial Conference in 1906. Everyone except Premier McBride was satisfied by the 1906 offerings, but the British Columbia leader insisted that "geographic consideration" necessitated even better "better terms" for his province. The

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27. Minutes and Proceedings of the Interprovincial Conference, 1902.





other provinces, however, turned down McBride's demand for a special commission to investigate British Columbia's claims. In the end the Pacific province carried its protest to Britain where it succeeded in convincing the Imperial government that the "finality clause" should be removed from the amendment to the constitution in which the new financial terms were embodied.<sup>28</sup>

The outbreak of war in 1914 created a unique situation in the history of Canadian federalism. The implementation of the War Measures Act gave the federal government such sweeping powers that the Rowell-Sirois Commission felt justified in remarking that "for a time, Canada exhibited the essential features of a unitary state."<sup>29</sup> Yet, as that Report also noted, this condition was due as much to the common will of the people of the country to see the war successfully completed, as to any especially draconian legislation.

War necessities encouraged, even forced, the federal government to expand its activities. Government finance, the threat of inflation, and military requirements all combined to make it necessary for the federal government to assume a far more positive role in the economic activities of the nation than at any time in the past. Most notable, perhaps, was the decision taken after much hesitation in 1917 to move into the field of direct taxation through the enactment of a personal income tax law. These measures all found their constitutional justification in the character of the emergency, an argument put forward during the war,

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28. Maxwell, Federal Subsidies, 109-11.

29. Report of the Royal Commission on Dominion-Provincial Relations, Book I, 93.



and accepted in large measure by the courts.<sup>30</sup>

Of course, the most controversial measure enacted by the federal parliament during the war was not one to which constitutional objections could be raised. That was the Military Service Act of 1917. The bitterness of the debate which centred on the conscription policy was not constitutional, but political and cultural in origin. The passage of this act, the formation of the Union Government, and the violently fought general election of December 1917 produced a deep resentment in Quebec. This feeling was given opportunity for expression in the debate on the peculiar motion presented to the Quebec Legislature by J. N. Francoeur in January 1918. It read:

That this House is of opinion that the Province of Quebec would be disposed to accept the breaking of the Confederation Pact of 1867 if, in the other provinces, it is believed that she is an obstacle to the union, progress and development of Canada.<sup>31</sup>

It is difficult to know how to characterize this resolution, since it fell short of calling for the repeal of the union, leaving the decision to the other provinces. The debate which followed had a curiously unreal tone for, since no one called for secession, there was really no question at issue. Each speaker noted the various problems created by the limitation of minority rights in the other provinces, and the abusive political campaign through which the country had just passed, but none expressed a preference for an

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30. Fort Frances Pulp and Paper Co. v the Manitoba Free Press (1923), A.C. 696.

31. Quebec and Confederation: A Record of the Debate of the Legislative Assembly of Quebec on the motion proposed by J. N. Francoeur (Quebec, 1918).





alternative system of government. The resolutions were withdrawn without a vote, following a paean of praise for Confederation sung by the Premier of the Province, Sir Lomer Gouin.<sup>31 a</sup>

The importance of the was period for the present discussion should not be over-emphasized. It is true that, in a sense, it reversed the trend of previous years and restored the federal government to a position of undoubted ascendancy. But it was a temporary development, due entirely to the emergency. In the long run the war had the effect, from a political viewpoint, of "calamitously damaging the federal initiative in internal affairs."<sup>32</sup> The immediate post-war years thus became, in the phrase of the Tremblay Commission, a period marked by "the preponderance of provincial activity."<sup>33</sup>

The conclusions that may be drawn about the post-1896 period are thus fairly obvious. In these years both the compact theory and provincial rights were widely accepted. Every leading politician seems to have plighted his faith in these verities. Yet that fact alone is perhaps cause for wondering if the concepts really had any serious meaning or if they had merely become the clichés of political discussion bereft of any definition. Since they were no longer ideas that aroused passionate debate, every politician apparently found it both wise and safe to express his support of them.<sup>34</sup>

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31a. Ibid., 117-36

32. Report of the Royal Commission on Dominion-Provincial Relations, Book I, 97.

33. Report of the Royal Commission of Inquiry on Constitutional Problems, volume I, 97.

34. The fullest contemporary statement of the provincialist version of the compact theory is contained in Sir George Ross, The Senate of Canada (Toronto, 1914).



The same conclusion cannot be drawn about the doctrine of cultural compact. It was the provincial rights controversy which sparked the most heated discussion in the first twenty-five years of Confederation; the second twenty-five witnessed a debate over minority rights. In the first period the concept of compact served its provincialists well. While the compact was adapted for use in the struggle for minority rights, it proved much less effective.



Chapter V  
COMPACT OF CULTURES?

By the 1890's the combination of the strenuous battle waged by the provinces, the decisions of the Judicial Committee of the Privy Council, and, not least of all, the declining strength of the federal Conservative party ensured at least a partial victory for the proponents of provincial rights. But if the provincial rights struggle was nearing at least a temporary conclusion, an equally serious conflict was just reaching a new stage of intensity. That was the conflict over minority school and language rights.

There had been high hope at the time of Confederation that the old racial and religious quarrels which had wracked the union would be ended forever, but the hope proved too optimistic. In 1865, Hector Langevin had predicted that "in Parliament there will be no questions of race, nationality, religion or locality, as this Legislature will only be charged with the settlement of the great general questions which will interest alike the whole Confederacy and not one locality only."<sup>1</sup> Nothing could better illustrate the foolishness of prediction. In the 1870's there was legislation in two provinces, New Brunswick and Prince Edward Island, which Roman Catholics believed destroyed guaranteed minority rights. By the 1890's the scene of the conflict shifted to the developing west, and it was fought there with a bitterness which shook the very foundations of Confederation. The growing fear that French-language and Roman Catholic minority rights were

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Confederation Debates, 368.





in danger of being wiped out by provincial Legislatures dominated by English-speaking Protestant majorities stimulated the development of a new theory of the Confederation compact. This was the theory of the compact of cultures.

The theory of the compact of cultures is less easily defined in detail than the theory of the compact of the provinces. In general it is based on the contention that Canada was established through an agreement of two founding peoples, the French-speaking and the English-speaking Canadians. By the compact that was ratified in 1867, these two peoples agreed that Canada should be a country inhabited by two nationalities and that the new nation, Canada, should recognize its bicultural nature. But to move beyond these generalities to the specific application of them is to walk a path cluttered with conflicting claims. The fact seems to be that the compact of cultures, like the compact of provinces, was a weapon developed in the heat of battle, rather than a well-defined doctrine which had been carefully worked out in 1867.

There are several obvious points that can be made about the attitude of the Fathers of Confederation to this question of cultural duality. In the first place, there can be no doubt that the Fathers, French and English, were intent upon the establishment of a "new nationality." Speaker after speaker in the Confederation debates emphasized this point. But it seems equally true that none of the Fathers intended or expected that the new nation would be culturally and linguistically homogeneous. It was to be a political nation in which cultural differences were



accepted as une chose donnée. The French-Canadian speakers in particular were concerned to establish the point that Confederation was a guarantee of the survival of the French-Canadian culture. "The idea of unity of races," Cartier said, "was utopian, it was impossible."<sup>2</sup>

If cultural duality was recognized, then, what guarantees were given to protect the minority? Again, speaker after speaker emphasized that the proposed federal system gave Quebec a local government that would exercise control over those subjects that in 1867 seemed necessary to her survival. Moreover, the British North America Act provided that French should be recognized as an official language in Parliament and the courts, and that Quebec should be an officially bilingual province. Finally, it was agreed that in certain circumstances the federal government would have the power to redress the grievances complained of by religious minorities in educational matters. But here it should be underlined that this power related to religious, not national minorities.<sup>3</sup> These then in outline were the statements of intent and legal actions of the Fathers of Confederation when they were faced with the facts of Canadian duality. Probably no one stated the Fathers' assumptions more clearly than Cartier, who declared:

Now when we were united together, if union were attained, we would form a political nationality with

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Ibid., 60.

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Eugene Forsey, "The British North America Act and Biculturalism," Queen's Quarterly, LXXXI (Summer 1964), 141-9.





which neither the national origin, nor the religion of any individual would interfere....

In our federation we should have Catholic and Protestant, English, French, Irish, Scottish, and each in his efforts and his success would increase the prosperity and glory of the new Confederacy.<sup>4</sup>

What is especially striking about such a statement is the lack of anything that might be called "racial" thinking in the statements of the Fathers. That Cartier spoke of Irish and Scottish, as well as English and French, suggests how little weight can be given to the idea of "national" blocs in the new Confederation. As Donald Creighton has written, the Fathers of Confederation "were as far away from the dogmas of the eighteenth-century Enlightenment as they were from twentieth-century obsessions with race, and with racial and cultural separatism."<sup>5</sup>

There were, of course, some speakers in the Confederation debates who found the government's statements, or the relevant sections of the Quebec Resolutions, unsatisfactory guarantees of the rights of the minority. A.-A. Dorion, for example, felt that the worst failing of the proposals was that they left the minority open to majority pressures. He noted:

I know that majorities are naturally aggressive and how the possession of power engenders despotism, and I can understand how a majority, animated this moment by the best feelings, might in six or nine

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<sup>4</sup> Confederation Debates, 60.

<sup>5</sup> Donald Creighton, The Road to Confederation (Toronto, 1964), 141.



months be willing to abuse its power and trample on the rights of the minority, while acting in good faith, and on what it considered to be its<sup>6</sup> rights.

Another speaker, this time a Conservative who apparently had some doubts about the plan, spoke specifically about a contract.

François Evanturel remarked:

I am in favour of the principle of Confederation, and am one of those who maintain that by means of that principle the rights and liberties of each of the contracting parties may be preserved; but on the other hand, I am of opinion.... that it may be so applied as to endanger and even destroy, or nearly so, the rights and privileges of a state which is party to this Confederation. Everything, therefore, depends<sup>7</sup> upon the conditions of the contract.

Yet even here one must be wary of reading too much into such a statement, for the speaker never made clear in speaking of the "parties" to the contract whether he meant the provinces or the two particular nationalities. And what is equally important, he did not continue his speech by suggesting that there either was, or should have been, a specific contract of any kind.

It would therefore seem that the most that can be said about Confederation is that, while it was clearly intended to meet the needs of both French and English Canadians, there was no detailed

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Confederation Debates, 250.

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Ibid., 711.



contract stating the conditions of the agreement. Nor was there any attempt to sketch out guidelines that might be followed when the country expanded into new areas. It may be worth adding that a reading of the Confederation debates gives the very strong impression that all the supporters of the scheme were far more concerned about the survival of British North America against outside pressures than about internal threats to the survival of either French or English Canadians. Likewise, those who opposed Confederation seemed, on the whole, to discount the external threat to survival and to emphasize internal dangers. But neither group, it can definitely be said, suggested anything like what in the next fifty years became the theory of cultural compact.

It may, of course, be suggested that the true intentions of the Fathers was expressed in the years immediately following Confederation in the legislation establishing Manitoba, and the Act of 1875 which made French an official language in the Northwest Territories. In one sense, at least, that contention would be valid. Macdonald and Cartier, who were responsible for the Manitoba Act, and the Liberals who sponsored the 1875 legislation all recognized facts when they saw them. Or to put it another way, they recognized that there was a large French-speaking community in the newly acquired territories and that therefore it was both just and necessary to give the groups language and schools





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recognition. But to take the next step, and to argue from these actions that the Fathers of Confederation worked from a theory that Canada was bilingual and bicultural from coast to coast, would be to step beyond the evidence into the realm of speculation. It would ignore also the cases of Prince Edward Island and British Columbia, which entered Confederation without the "bicultural" question being raised. What seems to be true is that the Fathers of Confederation were tolerant realists rather than theorists; where the minority existed in large enough numbers to make its presence felt, it was given recognition. Otherwise the question was not raised.

It was not until 1890 that serious discussion of the relations of French and English in the new western settlements was re-opened. Just as the depression seemed to heighten the struggle between Ottawa and the provinces, so also it appeared to contribute to the renewed friction between French and English. Moreover, the late 1880's witnessed two events that were tailor-made to revive the old cultural conflict. The first was the hanging of Louis Riel, and the second the passage of the Jesuit Estates Act. Riel was probably first and foremost a westerner, but the fact that he was partly French-Canadian and a Roman Catholic ensured that the sympathies of many Quebeckers would

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W.L. Morton, Manitoba: A History (Toronto, 1957), 141-6. Morton writes that in 1871 "a census was taken; the population of Manitoba was found to be 11,963, of whom 558 were Indians, 5,757 métis, 4,083 English half-breeds, and 1,565 whites. Catholics numbered 6,247 and Protestants 5,716."



be with him. These same facts, and the earlier execution of the Ontario Orangeman, Thomas Scott, likewise ensured that many English Canadians would be hostile to him. When he was hanged, most French Canadians appear to have believed that an injustice was done; many believed that the hanging was a direct attack on French Canada itself. When in 1888, Honoré Mercier, who as a defender of Riel already had a dubious reputation in English Canada, sponsored the Jesuit Estates Act, strong religious and cultural prejudices were stimulated in English Canada.

Writing of this period Professor Saywell has perceptively remarked:

The growth of a strident and belligerent nationalism, which elsewhere found expression in the so-called new imperialism in the last decades of Victoria's century, was not absent in Canada, although it took a devious form which served to obscure its connection with the racist implications of social Darwinism. Two threads were reasonably observable in English Canada: American protestant nativism and Pan Anglo-Saxonism, the former finding its outlet in attacks on the menace of Catholicism and the latter echoing Lord Durham's cry that the nation could not survive half French and half English. The two schools of thought were closely connected, indeed almost inseparable, and to the extent that they were the foundation of much English-Canadian nationalism that nationalism was





divisive rather than unifying.

In these same years French Canada also experienced a heightening of national consciousness, represented in politics by Mercier's Parti national, in ecclesiastical affairs and politics by the ultramontane Castors, and in journalism by the separatist views of Jules-Paul Tardivel. Which was cause and which effect is a question so complicated that not even a suggestion can be hazarded here.

It was in this atmosphere that the language and religious questions in western Canada became issues of debate. That the debate ended in the virtual abolition of minority language and religious rights in Manitoba, and language rights in the Northwest Territories, is at least partly explained by the fact that in the waves of new immigrants moving into the territories, very few spoke French. From the time Manitoba was founded, appeals were made, especially by the Roman Catholic Church, for settlers to move West. In 1887 Archbishop Taché of St. Boniface issued an appeal which revealed the nature of the problem:

Bien des fois dans le passé, soit conjointement avec l'Episcopat canadien, soit en mon nom propre, comme évêque de Saint-Boniface, j'ai tenté d'amener nos amis de la province mère à diriger de notre côté un courant d'immigration canadienne-française. Mais je dois l'avouer, ça n'a pas été sans un sentiment de tristesse profonde que j'ai dû constater la cause secrète de la presque inutilité de mes efforts.

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Saywell, The Canadian Journal of Lady Aberdeen, XXIV

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"Circulaire privée au clergé de toute la province ecclésiastique de Québec, Octobre 23, 1871," in Mandements, Lettres pastorales, circulaires, et autres documents publiés dans le diocèse de Montréal depuis son erection (Montréal, 1869-1926), Tome 6, 210-12.



national unity of the Dominion that there should be a community of language among the people of Canada, and that the enactment in the "Northwest Territories Act" allowing for the use of the French language<sup>12</sup> should be expunged therefrom.

McCarthy's speech on the resolution was largely devoted to supporting the first part of his proposition - that national unity required a single language. Not unnaturally French Canadians looked upon the motion as being directed as much against Quebec as against the small French-speaking settlements of the west.

Like most parliamentary debates, this one produced much consideration of specific legal points and very little of a philosophical nature. A good deal was said on all sides about "French aggression" and "English bigotry", but nothing was said about the cultural compact of Confederation. The nearest anyone came to that idea was the Prime Minister, Sir John A. Macdonald, who uttered the frequently quoted sentences:

I have no accord with the desire expressed in some quarters that by any mode whatever there should be an attempt made to oppress the one language or to render it inferior to the other; I believe that would be impossible if it were tried, and it would be foolish and wicked if it were possible. The statement that has been made so often that this is a conquered country is à propos de rien. Whether it was conquered or ceded, we have a constitution now under which all British subjects are in a position of absolute



Nous marchions d'égal à égal autant par le nombre que par la position, ayant, comme vous le dites si bien, un pied-à-terre sur les points principaux du Manitoba; aujourd'hui, bien que nous ayions réussi à garder notre position, nous le laissons pas pourtant que d'avoir été dépassés en nombre. D'autres ont compris l'importance de la position et ils ont si bien saisi les avantages qu'offrent nos belles prairies à la charrue du colon, que déjà leurs rangs se sont grossis au point de diminuer notre proportion numérique. Et, le dirai-je, non seulement l'Angleterre et l'Ecosse ont fourni chacune plus de colons au Manitoba que la Province de Québec, mais la Russie elle-même en a fourni autant.

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Taché's appeal went largely unheard as French Canadians chose rather to follow the lure of quick success in the mill towns of the neighbouring United States. The stage was thus set for the fulfilment of Taché's worst fears.

By 1890 many of the same people who had been caught up in the Riel and Jesuit Estates Act agitations were drawn into the campaign to abolish the official use of the French language everywhere it was not specifically guaranteed by the British North America Act. In January 1890, D'Alton McCarthy introduced the following resolution into the House of Commons:

Whereas it is expedient in the interest of the





equality, having equal rights of every kind - of language, of religion, of property and of person. There is no paramount race in this country, there is no conquered race in this country; we are all British subjects, and those who are not English  
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are none the less British subjects on that account.

Macdonald's statement is a fine one; but when examined closely its meaning is less than clear. Did he mean that all British subjects, whatever their nationality, had an equal right to the official recognition of their language in the political and educational institutions of the country? Though Macdonald's statement was later interpreted to mean that French and English Canadians, as groups, had absolutely equal rights throughout the country, it is difficult to believe that this was Macdonald's understanding, or even that anyone else in 1890 believed that it was. This conclusion seems to follow the fact that in the debate on the McCarthy resolution Macdonald was not supporting absolute rejection but rather an amendment which left the question to the determination of the local legislature. That step was, for all practical purposes, an acceptance of abolition. It was also a further acceptance of the idea, implicit in the New Brunswick and Prince Edward Island school cases, that minority rights were provincial rather than national responsibilities.

In the debate on the McCarthy motion only one speaker appears to have held the view that 1867 represented an agreement which foresaw the eventual extension of French-Canadian language and Roman Catholic religious rights across the entire country. This



appears to be the implication in the remark of Mr. Amyot: "If we diminish the strength of the French language in any part of Confederation, we reduce the strength of the language as a whole. This is unjust, because when we entered Confederation it was promised that we would receive full justice and never lose any of our rights."

In most respects <sup>14</sup> the 1890 debate on the French language in the Northwest is more revealing than the subsequent years of debate over the Manitoba School Question. The Manitoba debate related so closely to a specific federal power that few speakers ventured into the realm of general principles. Throughout the debate the deteriorating Government held the view that it was its responsibility to protect the rights of the Roman Catholic minority in Manitoba. The fillibustering Opposition, on the other hand, admitted that the power existed but argued that it could not be enforced, and that conciliation was preferable to coercion. As a sidelight to the provincial rights aspect of the question, it may be noted the Liberal majority in the Ontario Legislature in January 1896 passed a resolution which, in effect, upheld the position of Laurier and his friends in Ottawa. Not even so strict a provincialist as Oliver Mowat, who moved the resolution, could resist the temptation to reach out beyond the province when party advantage was <sup>15</sup> to be gained.

A great deal was said in the debate over the Manitoba School Question about provincial rights and federal duties, perhaps even

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<sup>14</sup>

Ibid., 968

<sup>15</sup>

C.R.W. Biggar, Sir Oliver Mowat (Toronto, 1906), II, 645.





more than about minority rights, which was the essential issue. But there was no great debate about the cultural compact of Confederation. The same Mr. Amyot who in 1890 had come close to espousing this doctrine, opposed disallowance of the Manitoba School Act in 1893 on the following argument:

To disallow a law to go against the principle of autonomy. We are all in favour of autonomy. Some years ago we members from the Province of Quebec were glad that the principle of autonomy was applied in the question of the Jesuits' estates. We were glad to be protected by that rampart.... Shall we for a single exception risk the whole system of autonomy?

16

Mr. Amyot's position in these two instances is indicative of the difficulty faced by those who wanted to defend both the rights of minorities and the autonomy of the provinces.

The fact is that a reading of the almost endless debate on the Manitoba School Question reveals little on the subject of the "cultural compact" of Confederation. It may be argued that this was so because it was simply taken for granted. But there is no evidence to support this contention. Indeed, it was even possible for those who opposed the spread of the French language beyond Quebec to appeal to the Compact to support their views. Speaking to his electors in 1896 D'Alton McCarthy is reported as saying that "I am still of the opinion, which I have hitherto with your approval contended for, that, except where permitted by the terms of the



Confederation Compact, there should be but one official language in Canada. To me it seems as unstatesmanlike as it is unpatriotic for the sake of a temporary peace with our French Canadian fellow subjects to foster a spirit of French nationalism which can never be permitted to attain fruition so long as Canada remains a part of the British Empire."

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The fact seems to be that it was only after the Manitoba School Question, and more particularly after the great movement of new settlers into the Northwest following the turn of the century, that much thought was given by anyone to the problem of the rights of French Canadians in a nation that was now being peopled from coast to coast. No one gave this question more thought than Henri Bourassa. Indeed he would appear to be the father of the doctrine of the cultural compact of Confederation.

It is much simpler to state the Bourassa thesis on the nature of Confederation than to provide a consistently argued case to support it. It was a theory which evolved, and its applications only became apparent, as the conflict over religious and linguistic rights outside Quebec was manifested in specific issues. It is, however, perhaps best to begin with a statement of the doctrine in its complete form, before examining its development. In 1916, when the struggle against Regulation XVII of the Ontario Department of Education was at its height, Bourassa wrote:

Dans la pensée des Pères de la Confédération, le pacte fédéral et la constitution qui en définit les termes de la sanction, devaient mettre fin au conflit des races et des Eglises et assurer à tous, catholiques



et protestants, Français et Anglais, une parfaite égalité de droits dans toute l'étendue de la Confédération canadienne. L'Acte du Manitoba, voté par le parlement impérial en 1870, et l'Acte des Territoires du Nord-Ouest, voté à Ottawa en 1875 portent l'empreinte fugitive de la même pensée intelligente et généreuse. Ce furent nos<sup>18</sup> dernières victoires.

What was the evidence that Bourassa adduced to support this proposition?

The answer to that question is both simple and complex. The simple answer is that he arrived at that conclusion in the heat of battle when every intellectual weapon was necessary to assist the cause of the beleaguered minority. It should never be forgotten that Henri Bourassa was primarily a journalist and a politician involved in the great issues of his time, rather than a secluded constitutional scholar. The earliest statement of Bourassa's view of the compact appears to have been in 1902. At that point he spoke of a dual compact, the one provincial, the second national. He wrote:

Le statut impérial que nous a donné le régime actuel n'est que la sanction d'un double contrat: l'un, conclu entre les Français et les Anglais de l'ancienne province du Canada: et l'autre qui avait pour but de réunir les colonies éparses de l'Amérique britannique du Nord. Nous sommes donc parties





contractantes à deux conventions, l'une nationale  
et l'autre politique; et nous devons veiller d'un<sup>19</sup>  
oeil jaloux à l'intégrité de ces traités.

At this stage Bourassa made no effort to explain the nature of the "national" contract, though it is interesting to note that he spoke of the contract as one between the two Canadas and to which apparently the other provinces were not party. The second contract, which, in the years following the Boer War, was Bourassa's main preoccupation, was the contract that ensured Canada was not required to assume any new Imperial responsibilities. Indeed, in these years it was the relations of Canada with the outside world that concerned Bourassa most consistently. He appears to have believed that the partnership which had been contracted "sur des bases équitables et bien définies" was one that guaranteed English Canadians would not impose Imperial<sup>20</sup> obligation on French Canadians.

Bourassa's association with La ligue Nationaliste Canadienne illustrates his early concern with the internal question of the relations of French and English Canadians. The Ligue's programme was devoted to three main subjects: the autonomy of Canada within the Empire, the intellectual and material development of the Canadian nation, and, thirdly, "Maintien absolu des droits garantis aux provinces par la Constitution de 1867 dans l'intention des auteurs. Respect du principe de la dualité des langues et du droit des minorités à des écoles séparées."<sup>21</sup> The following year, 1904, in the Ligue's newly founded newspaper, Le Nationaliste, Bourassa set

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H. Bourassa, Le Patriotisme Canadien-Français (Montréal, 1902), 8.

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H. Bourassa, Grande-Bretagne et Canada (Montréal, 1901), 39-40.

21

La Ligue Nationaliste Canadienne: Programme (1903), 6.



down the general principles of his view of Canada - views which  
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never serious changed.

La patrie, pour nous, c'est le Canada tout  
entier, c'est-à-dire une fédération de races distinctes  
et de provinces autonomes. La nation que nous voulons  
voir se développer, c'est la nation canadienne,  
composée de Canadiens français et de Canadiens anglais,  
c'est-à-dire de deux éléments séparés par la langue  
et la religion, et par les dispositions légales né-  
cessaires à la conservation de leurs traditions  
respectives, mais unie dans un attachement de con-  
fraternité, dans un commun attachement à la patrie  
23  
commune.

Until 1905 Bourassa's concept of the cultural compact remained  
largely a theory. But in 1905 he faced the necessity of drawing  
out its implications when the bills were brought forward establishing  
the new provinces of Saskatchewan and Alberta. At this point, It  
is possible to return to the mainstream of debate participating in  
it.

In the debate on the Autonomy Bills in 1905 the Laurier Government  
found itself under attack from two directions. In the first place,  
since the legislation contained the clauses designed to guarantee the  
continuation of minority schools as they existed in the Territories,  
it was criticized by those who believed the new provinces should  
be left absolutely free in educational matters. On the other side

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André Laurendeau, "Le nationalisme de Bourassa," in La Pensée  
de Henri Bourassa (Montréal, 1954), 9-56.

23

Le Nationaliste, 3 avril, 1904.





the attack came from those few members who believed the bills did not go far enough in providing guarantees for the minority in the new provinces. Laurier's position with respect to both these attacks was, in effect, to defend what he considered to be the status quo though he did present a theory of Confederation which went part way in meeting Bourassa's claims. His position of Section 93 of the British North America Act:

But I shall be told that this exception applies to Quebec and Ontario alone, and not to the other provinces. Sir, that is true. Amongst the four provinces then united, Ontario and Quebec alone had a system of separate schools. But I reminded the House a moment ago, that it was not the intention of the Fathers of Confederation, it was not the intention of Sir John Macdonald and Mr Brown, to limit Confederation to the narrow bounds it had in 1867..... It is reasonable to suppose, if the Confederation act recognized that other provinces were to come into Confederation similarly situated to Ontario and Quebec that the same privileges should not be given to the minority as in Ontario and Quebec.

24

He concluded saying that if separate schools existed in a territory at the time of application for provincial status, then those schools should be brought under the protection of Section 93. It is important to note here that Laurier was not advancing a general theory of Confederation; rather he was interpreting the legal intention of the constitution in a specific instance. Moreover, he



was speaking specifically of separate schools as religious institutions. At a later stage in the debate, Laurier expressed his opposition to an amendment which sought to make French an official language in the new provinces, but pointing out that while the constitution contained specific guarantees of religious rights, it was silent on the subject of language.<sup>25</sup>

Finally, to the claim of the Opposition that the educational clauses infringed upon provincial rights, Laurier insisted that the constitution plainly provided that minority rights should take precedence over provincial rights in the matter of separate schools.<sup>26</sup>

It feel to Bourassa to defend the view that the intentions of the Fathers of Confederation went much further than the Gouvernement or the Opposition recognized. He argued that Section 93 was intended to guarantee that "a man, in whatever province of Canada he may choose his abode, can rest assured that justice and equality will reign and that no matter what the majority may attempt they cannot persecute the minority." The contract, he continued continued, which guaranteed this situation, was not a written one. It was rather an unwritten, but well-understood, contract based on the entire history of the country beginning with the decision of the British, after the Conquest, to guarantee the rights and privileges of the French-Canadian Roman Catholics. When his speech was interrupted by a question about the place of the maritime provinces in this contract, Bourassa responded saying that "the great difference is that they were already self-governing

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<sup>25</sup>

Ibid., 8572-82.

<sup>26</sup>

Ibid., 2917.



provinces when they entered the Confederation compact in 1867. They had a school system as well as a judicial system under which they had lived for years. But the Northwest Territories were purchased by the people of Canada. The money which has been spent for the settlement of that country has been the money of Catholics as well as of Protestants, the money of French Canadians as well as of English Canadians."<sup>27</sup> At this point, the argument had obviously moved from constitutional to historical, legal, and even economic grounds. It should be added that in reading Bourassa it is never entirely clear whether he was speaking about the kind of country he wished to see develop, or whether he meant the country he believed the Fathers of Confederation had intended to establish. I was, perhaps, a case of the wish being father of the thought.

The next occasion on which the question of minority rights arose was in 1912 when the Keewatin Territory was transferred to Manitoba. While this action raised again the whole question of the rights of minority schools, no speaker in the debate subscribed to the theory of cultural compact, though many defended the rights of the minority on more narrow legal grounds. Outside the House of Commons, however, Bourassa once more advanced his view of the constitution<sup>28</sup> with his usual vigour and resourcefulness.

The most important debate on the status of the French language, outside the Province of Quebec, as opposed to that of separate schools, took place during the controversy over Regulation XVII. And like most debates of this kind all sides presented statements and counter-statements, each being able to find some evidence to support their

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<sup>27</sup>

Ibid., 8302

<sup>28</sup>

H. Bourassa, Pour la Justice (Montréal, 1912).





cases.

As usual, it is not impossible to discover real and apparent contradictions in the positions of most of the disputants. The debate raged with increasing fury from 1912 to 1916. It first became a matter of open political controversy in January of 1915 when two English-speaking Protestant Members of the Quebec Legislature moved the following resolution:

That this House, without derogating from the principles of provincial autonomy, and without any intention of interfering with any of the provinces of Confederation, in any manner whatsoever, views with regret the divisions which seem to exist among the people of the Province of Ontario over the bilingual school question, and believes it is in the interest of the Dominion at large that all such questions should be considered on broad, generous and patriotic lines, always remembering that one of the cardinal principles of British liberty throughout the Empire is regard for the rights and privileges of minorities. 29

In supporting this resolution, which, regardless of protestations to the contrary, did touch the affairs of another province's jurisdiction, Premier Gouin appealed to an argument which Bourassa had been advancing for years. "Who will pretend," he asked rhetorically, "that it was not in the minds of the framers of the constitution to give equal rights in matters of language, of religion, of property and of person to both races as avowed by Sir John Macdonald in 1890; and who will pretend that the British North



America Act was not inspired by the same sentiments?"

Gouin was nevertheless very uneasy about the action of his Legislature in the passing of this resolution. He wrote to Premier Hearst several weeks after the debate, explaining that no official copy of the resolution had been transmitted to the Government of Ontario because he did not wish to "dictate to a sister province." Hearst replied codly that "it appears to me a somewhat dangerous practice for one Legislature to attempt to criticize the Act of another, naturally inviting similar criticisms in return."<sup>31</sup>

A year later the matter was further complicated when the Quebec Legislature passed an act which gave Quebec school commissions the right to contribute directly to the support of Franco-Ontarian schools.<sup>32</sup> It would be impossible to justify this action on the basis of any strict theory of provincial autonomy.

By this time, the matter had spilled over into federal politics. In March 1915 a resolution was presented to the Senate by Senator L.-O. David which stated:

This House, without derogating from the principal (sic) of provincial autonomy, deems it proper and within the limits of its powers and jurisdiction and in pursuance of the object for which it was established, to regret the divisions which seem to exist among the prople of the province of Ontario in connection with the bilingual school question and believes that it is in the interest of the Dominion at large that

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Ibid.

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P.A.C., Gouin Papers, Gouin to Hearst, February 3, 1915; and reply, February 19, 1915.

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Rumilly, Histoire, XXI, 49-52.





all such questions should be considered on fair and patriotic lines and settled in such a way as to preserve peace and harmony between the different national and religious sections of the country, in accordance with the views of the Father of Confederation and with the spirit of our Constitution.<sup>31</sup>

An inconclusive debate raged around the proposition that the passage of any such resolution would be a grave injustice to Ontario, and an infringement upon provincial autonomy.

In the meantime pressure was being brought to bear on Prime Minister Borden to take some action which would at least quiet the situation. Borden refused on the ground that the matter at issue<sup>32</sup> was essentially a provincial question. Laurier found it much less easy, or desirable, to resist the pressure in his own party to take a public stand on the Ontario bilingual school question. He therefore gave his support to a plan to raise the question, in the form of a resolution, in the House of Commons.

On May 9, 1916, Ernest Lapointe moved the following resolution:

It has long been the settled policy of Great Britain whenever a country passed under the sovereignty of the Crown by treaty or otherwise, to respect the religion, usages and language of the inhabitants who thus become British subjects.

That his Majesty's subjects of French origin in the Province of Ontario complain that by recent legis-

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Canada, Debates of the Senate, 1915, 62.

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Borden Papers, Casgrain, Blondin and Patenaude to Borden. April 20, 1916; and reply April 24, 1916.



lation they have been to a large extent deprived of the privilege which they and their fathers have always enjoyed since Canada passed under the sovereignty of the British Crown, of having their children taught in French.

That this House, especially at this time of universal sacrifice and anxiety, when all energies should be concentrated on the winning of the war, while fully recognizing the principle of provincial rights and the necessity of every child being given a thorough English education, respectfully suggest to the Legislature Assembly the wisdom of making it clear that the privilege of the children of French parentage of being taught in their mother tongue<sup>33</sup> be not interfered with.

It is a little curious that this resolution dealt only with Ontario, since a similar situation existed in less critical form in the Province of Manitoba. It was charged that the federal Liberals were prepared to condemn a provincial Conservative administration in Ontario, but ignore the sins of a provincial Liberal administration in Manitoba. Doubtless there was something in this charge, though it may also be noted that some members of the Franco-Manitoban community had appealed to Laurier to let them settle their own difficulties quietly in Manitoba.<sup>34</sup>

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<sup>33</sup> Canada, House of Commons Debates, 1916, 36-8

<sup>34</sup> Laurier Papers, Albert Dubuc à Laurier, 26 avril 1916.



What is interesting about the debate on the Lapointe Resolution, apart from its relatively mild character, is that the appeal of the supporters of the resolution was almost exclusively to the good will of English Canadians. While much was said about the history of Canada, and about its constitution, no speaker made any attempt to advance a general theory of Confederation as a bicultural compact. Again as in earlier debates on similar questions, the members' attention was focussed on the specific situation under discussion rather than on any general theory of the relations of French and English Canadians in Confederation. Of course, the resolution itself presented a general theory, but it was hardly a theory of cultural compact; it was rather a statement of "British fair play."

The very limited claims of the supporters of the resolution may be illustrated best by the speech of Paul-Emile Lamarche, a close follower of Henri Bourassa, who in 1916 sat as an Independent in Parliament. He put his case briefly and untheoretically:

Let me in a few words state our position in regard to the English and French languages. We consider a French education as a duty, and the acquisition of the English language as a necessity. We will not budge from our duty; we will remain Frenchmen. But we realize the necessity of a knowledge of English in all walks of life. The lack of it would be a serious handicap in the race for material success in life, not only in this country but on the whole continent of America.

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Outside the House of exposition of a more general theory was left to Bourassa. On this occasion, as so often before, he plighted his faith in a thoroughly bicultural Canada. To support his view that such a vision had moved the Fathers of Confederation, he quoted, as he had done previously, the remarks made by Macdonald in the debate on the French language question in the Territories in 1890.<sup>36</sup>

The Lapointe Resolution of course failed to pass. Its opponents adopted, for the most part, the argument that the subject should not even have been raised in the federal Parliament. As that paragon of provincial rights virtue, the Toronto Globe, put it: "Canada is a Confederation. The Federal Parliament seems to forget that fact occasionally, when it gives advice to the provinces."<sup>37</sup>

It is difficult to assess, in any final way, the importance of the theory of cultural compact. It can certainly be stated that however much it may have reflected the spirit of Confederation, it was nevertheless a theory advanced by only a minority even in the French-speaking community. It would be difficult to find a single English Canadian who supported the idea in the years before 1921- unless Macdonald's candidacy is accepted. Bourassa himself was aware of the difficulties of the theory, for he recognized that it was based more on an historical and moral claim than on any constitutional document which could be made to stand up in court. In 1913 he wrote:

Le magistrat ou le praticien qui croit connaître  
la constitution du Canada, parce qu'il possède à fond  
le texte du statut appelé l'Acte de l'Amérique britannique

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<sup>36</sup> Henri Bourassa, La Conscription (Montréal, 1917), 20.

<sup>37</sup> Toronto Globe, May 10, 1916.



du Nord. et qu'il dissèque à la loupe chacun de ses articles, n'est qu'un âne, s'il ignore l'origine des pouvoirs publics modelés sur la constitution britannique, et les circonstances particulières qui ont précédé et entouré la signature du pacte fédéral. En d'autres termes, il doit connaître à fond l'histoire de l'Angleterre<sup>38</sup> et l'histoire du Canada."

But, as Bourassa knew, interpretations of history differ, and law courts demand specific legal texts rather than discourses on the spirit of the constitution or the intentions of the Fathers of Confederation. In 1914 Bourassa told a correspondent:

...selon l'opinion de tous les juristes, ces garanties ne couvrent que les droits des minorités catholiques et protestantes, en matière d'enseignement confessionnel. Elles ne visent nullement l'enseignement de la langue. Sur ce point, nous ne pouvons qu'invoquer une garantie indirecte, formelle selon moi, si l'on invoque l'esprit de la constitution. Mais comme vous le savez, de tout temps, les légistes s'attachent à la lettre plutôt qu'à<sup>39</sup> l'esprit des lois.

Bourassa's cultural compact was, in the last analysis, a moral compact. But in the politics of a constitution, claims based on moral principles are often less successful than those based on specific legal guarantees, or on power. The idea of provincial

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Le Devoir, 3 septembre 1913.

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Bourassa Papers, Bourassa à Leau, 9 janvier 1914.





compact was successful to the extent that it won the support of a number of provinces. The failure of the idea of cultural compact was that it had no similar appeal.

Perhaps it was for this reason that the practical politicians who in 1918 debated a resolution in the Quebec Legislature suggesting that Quebec might withdraw from the pact of Confederation, if the other provinces believed her an obstacle to Confederation's progress, made no claims about cultural compact. In this debate, which had a tenor more of sorrow than of anger, it was Sir Lomer Gouin who expressed the characteristic viewpoint. He declared:

I wish to make my position on the subject very clear, Mr. Speaker. I believe in the Canadian Confederation. Federal Government appears to me to be the only possible one in Canada because of our differences of race and creed, and also because of the variety and multiplicity of local needs in our immense territory.

To make myself more clear I declare that if I had been a party to the negotiations of 1864, I would certainly have tried, had I authority to do so, to obtain for the French Canadian minority in the sister provinces the same protection that was obtained for the English minority in the Province of Quebec. I would have asked that not as a concession, but as a matter to me, I would have voted in favor of the resolutions of 1864.

At the time of the debate of 1865, I would have renewed my demand for this measure of prudence and justice. And if I had not succeeded, I would still



have declared myself in favor of the system as it was voted March 13, 1865. And even at this moment, Sir, in spite of the troubles that have arisen in the administration of our country since 1867, in spite of the trouble caused those people from Quebec who constitute the minority in the other provinces, if I had to choose between Confederation and the Act of 1791, or the Act of 1880-41, I would vote for<sup>40</sup> Confederation still.

Gouin's statement may be taken as a suitable summing up of the views of Confederation held by the vast majority of Canadians before 1921.

The concept of the compact of cultures had on its side none of the powerful influences which had played so large a part in gaining wide acceptance for the theory of the compact of provinces. No political party adopted it as part of its platform - that would appear to be true even of the Nationalistes or Autonomists who took a general lead from Bourassa in the 1911 election. Nor did the theory win the whole-hearted approval of powerful provincial governments; indeed to the extent that it implied a limitation on provincial powers, it went against the views of most of the provinces. Not even the Province of Quebec, despite Premier Gouin's statements and actions to the contrary during the Ontario school crisis, adopted the theory in any consistent fashion. Finally, the compact of cultures, unlike the theory of the compact of provinces, won no support from the Judicial Committee of the Privy Council. In fact,



minority rights fared less well in this court than in Canadian courts.<sup>41</sup> In the light of these observations, it is not surprising that the concept of the cultural compact of Confederation remained the possession of only a small minority of Canadians.

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F.R. Scott, "The Privy Council and Minority Rights,"  
Queens Quarterly, XXXVII (Autumn 1930), 668-78





## EPILOGUE

Two of the main themes which dominated Canadian political and constitutional history in the years between 1867 and 1921 were the conflict of federal and provincial powers, and the conflict which arose over the rights of the religious and linguistic minorities. It is obvious that if provincial rights and minority rights had coincided within the same geographic or constitutional boundaries, the problem would have been a relatively simple one. But the complexity of the problem, in part, arises out of the fact that this coincidence did not exist, and that provincial rights and minority rights often were in conflict. For obvious political reasons the minorities could usually expect to win a more sympathetic hearing at Ottawa than in provincial capitals. On the other hand, the defenders of provincial rights often looked on Ottawa as the enemy.

In each of the conflicts a theory of compact was developed. In their attempt to break free from what has been called the paternalism of the federal government, the provinces fell back on the theory that the constitution was based on a compact or agreement among the provinces which had created Confederation. The federal government was thus seen as primus inter pares, at best, or in the extreme, as the servant of the provinces. In the attempt to protect and extend the rights of the religious and linguistic minorities, the theory of Confederation as a compact between cultures, an Anglo-French entente, was developed. According to this theory, Confederation was a partnership of equal cultures whose rights were guaranteed mutually throughout the whole Confederation. It can be said



that by 1921 the doctrine of provincial, rights and its compact underpinnings had gained the ascendant among Canadian politicians, and was at least partly accepted by legal scholars. The second theory of compact, that of cultures, had won no such following.

This conclusion is well supported by the evidence that has been briefly examined in preceding chapters. It can be further illustrated by a random sampling of opinions drawn from the writings of influential publicists and scholars. This examination is not intended to be exhaustive, partly because there is no complete bibliography on the subject, and partly because such an examination would prove extremely repetitive.

It is not perhaps surprising that one of the earliest statements of the compact theory by a constitutionalist came from Ontario. In a volume published in 1880 and dedicated to Edward Blake, Samuel James Watson, the Librarian of the Legislative Assembly of Ontario, argued that the provinces had preceded the federal government and had indeed created it by "federal compact." "It must be born in mind," he wrote, "that the federal parliament is the of-spring of the Provincial legislatures; it is not their progenitor; and that in confiding to it such of their powers as were necessary to establish it as a greater Representative Institution than themselves, there were yet certain powers which they reserved for their own behoof."<sup>1</sup> It was a sign of the times in Ontario that Watson

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1. S.J. Watson, The Powers of Canadian Parliaments  
(Toronto, 1880), 51-2.





should be deeply concerned with the problem of provincial rights. Indeed it is hard to avoid the impression that his volume was little more than a reflection of the opinion of the Ontario government, that it was an attempt to provide some scholarly veneer to the case which Mowat was presenting against the federal government.

Indeed, Watson's study may well have been written in answer to the work of another Ontario scholar, D.A. O'Sullivan who in 1879 had vigorously presented the case for the precedence of the federal powers. This writer maintained that "in 1867 the three existing provinces desired to be federally united into one Dominion; and they were so united and formed thereafter Canada. The three provinces were then lost sight of, and in their stead Canada appeared; and Canada was immediately thereafter divided up into four provinces."<sup>2.</sup> Again it may be a sign of the times, or the superior logic of Watson, that in a prefatory statement to a second edition of his text in 1887 O'Sullivan was at least prepared to admit that a case could, and indeed had been, made for the provincialist version of the constitution.<sup>3.</sup>

A similar division of opinion may be found among Quebec writers. In 1878 in a popular volume on the constitution, B.-A.-T. de Montigny described and justified the highly centralized nature of the Canadian federal system, comparing it favourably with the American system which left the residual power with the states. "La Confédération possède," he wrote,"

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2. D.A. O'Sullivan, A Manual of Government in Canada (Toronto, 1879), 119.

3. D.A. O'Sullivan, Government in Canada (Toronto, 1887), 22, 37-8.



le double avantage de nous donner la puissance d'une union législative et la liberté d'une union fédéral, avec la protection pour les intérêts locaux." And, in Montigny's judgment, it was this combination, plus the willingness with which the Fathers had put aside their national and political differences which had resulted in "l'édification d'une des plus belles constitutions qu'ait jamais connue le monde."<sup>4.</sup>

As has already been noted Judge Loranger expressed the provincialist viewpoint in his famous Letters on the Constitution in 1883. A more complete exposition of this position was published in 1889 by P.B. Mignault. In this writer's judgment the Canadian constitution was closely modelled on that of the United States. In the Canadian federal system, he argued, the federal and provincial governments were separate but equal. He wrote:

Nous avons dit que les parties contractantes font deux parts de leur souveraineté et qu'au moyen de concessions communes et réciproques, elles créent une nouvelle puissance qui les contient sans les absorber. De là, tirons une conséquence essentielle. Chaque état ou province conserve son existence particulière et les prérogatives qu'il n'a pas cédées au pouvoir central. Il n'y a nulle subordination, soit de la province au gouvernement général, soit de ce dernier à la province. Il y a égalité absolue, souveraineté commune; chaque pouvoir est suprême dans

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4. B.-A.-T. de Montigny, Catéchisme Politique

(Montreal, 1878), 51-3.



sa juridiction et dans sa sphère d'action."

But in his concluding section, Mignault went even a step further, indicating that since the federation had been created for the express purpose of protecting the rights of the provinces "leurs intérêts sont sacrés," thus suggesting that the provinces were "more equal" than the federal government.<sup>5.</sup>

Two other English-Canadian constitutionalists of some stature may also be noted. Alpheus Todd, in his influential Parliamentary Government in the Colonies, committed himself completely to the theory of "provincial compact."<sup>6.</sup> A.H.F. Lefroy, another well-known scholar, writing in 1913, favoured the legalist's view that whatever political process had preceded the passage of the British North America Act, the fact remained that the Act was purely and simply a statute of the British Parliament.

From this brief survey, it is obvious that legal and historical considerations were inconclusive on the nature of the constitution. By combining the two approaches, W.P.M. Kennedy arrived at what was perhaps the most acceptable conclusion presented in the period. In 1921 Kennedy argued that in its origins Confederation was a "thinly veiled legislative union," and that this was clearly the intention of the Fathers of Confederation. Kennedy, it may be noted, was one of the very first writers to examine the stated views of the

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5. P.B. Mignault, Manuel de Droit Parlementaire (Montréal, 1889), 224,333.

6. Alpheus Todd, Parliamentary Government in the Colonies (Boston, 1880), 325-6.

7. A.H.F. Lefroy, Canada's Federal System (Toronto, 1913).





Fathers with any great care. The writer admitted, however, that the political struggles of the half century after Confederation, and the legal decisions of the Judicial Committee, had transformed the constitution into a truly federal one. These developments, he believed, served the needs of the country. A powerful central government was necessary during the early years of development, but decentralization suited the country better, once these plans had been completed. "The second period is the period of provincial rights," he wrote, "which have increased under judicial interpretations. These, however, have not violated the framework. Indeed it may be said that they have humanized the British North America Act. They have given it the elasticity of life. They have rescued it from the uncritical worship due to an imperishable and immutable relic of rigid antiquarianism."<sup>8</sup> Kennedy's praise of the decentralization that had taken place in the second period of Confederation may be considered, perhaps, as a characteristic opinion of the times.

Turning from the provincialist version of the compact to the cultural version, one is immediately struck by the lack of illustrative material. None of the writers cited above gave the matter any serious attention, neither affirming nor refuting it. Indeed they seem not even to have heard of it. Naturally they mention the clauses of the constitution relating to bilingualism and separate schools, but that is the long and

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8. W.P.M. Kennedy, "The Nature of Canadian Federalism"

(1921), in Essays in Constitutional Law (London, 1934), 60.



the short of it. Nor do the historians provide any contrary examples. From the English-Canadian side what was probably a typical view was expressed by G.M. Wrong, an historian whose leading interest was French Canada. He noted:

The federation Act made Canada a bilingual country in federal affairs. French was placed on a complete equality with English in the Federal Parliament. It is equally with English the language of the federal laws and of the federal courts. But while the federation Act expanded, it also limited the official use of the French tongue. It makes the Province of Quebec, and only the Province of Quebec, bilingual.<sup>9.</sup>

In the years of struggle over bilingual schools in Ontario, the views of Professor Wrong were not easily accepted by French Canadians. In 1916, a French-Canadian constitutionalist assessed the successes and failures of Confederation in these terms:

Cette nouvelle constitution qui nous fut donnée en 1867 a-t-elle tenu toutes ses promesses? Au point de vue du progrès général, je n'hésite pas à dire oui. Notre pays, en effet, a pris un essor considérable, son développement commercial, industriel et matériel a été énorme; il a fait l'étonnement du monde. Mais sous d'autres rapports, pouvons-nous dire la même chose? Les garanties solennelles données aux minorités sont

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9. G.M. Wrong, "The Creation of the Federal System in Canada," in The Federation of Canada (Toronto, 1917), 29.30.





dans bien des cas ignorées, répudiées et foulées  
aux pieds comme un vulgaire chiffon de papier.<sup>10.</sup>

Nevertheless conflicting opinions could be found even in the embattled Franco-Ontarian community. Senator N.A. Belcourt, one of the Ontario minority's main leaders, asserted that "the constitution, natural law and justice, every rule of pedagogy, rights acquired by the minority, British fair play, sound policy, and last but not least, common sense, all stand out against it (Regulation XVlll)."<sup>11.</sup>

But J.-U. Vincent, a founder of the Association Canadienne-Française d'Education d'Ontario, argued at length, and with extensive documentation, that: "LE FAIT VERIDIQUE, TOUT REGRETTABLE QU'IL SOIT, est qu'il n'y a que pour LE DOMAINE FEDERAL ET POUR LA PROVINCE DE QUEBEC QUE LA CONSTITUTION DECRETE L'EGALITE DES DEUX LANGUES."<sup>12.</sup>

French-Canadian historians, in the years before 1921, provided little evidence to aid the supporters of the compact theory in either its provincialist or its cultural variation. I.-G. Turcotte's study of the union period and Confederation is a remarkably impartial, factual account. It makes no mention of the compact idea.<sup>13.</sup> L.-O. David, who had been an opponent of

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10. Charles Langelier, La Confédération (Montreal, 1916), 37.

11. N.A. Belcourt, French in Ontario reproduced from the University Magazine (December 1912), 4.

12. J.-U. Vincent, La Question scolaire (Ottawa, 1915), 58.

13. I.-G. Turcotte, Canada Sous l'Union, 1841-67 (Montréal, 1882).



Confederation in 1865, remained convinced in 1898 that his earlier criticisms had been just, that rather than providing specific guarantees of provincial rights and minority rights, Confederation had been "une grande victoire anglaise."<sup>14.</sup>

Ludovic Brunet, writing about the same period in 1899, reached the same conclusions: the highly centralized federal system was really a step toward the achievements of Lord Durham's recommendations. "Le temps et les événements," he concluded, "ont malheureusement donné raison aux sentiments de M. Dorion<sup>15.</sup> et du parti libéral."

The major French-Canadian historians of the first part of the twentieth century have expressed similar views on the nature of Confederation, though their assessment of its benefits have differed. For example, the lectures delivered by Abbé Lionel Groulx and published in 1918 contain no attempt to prove that Confederation was a compact either of provinces or of cultures. Speaking of the division of powers, he concluded:

L'autorité du centre retenait assez d'attributions pour exercer la souveraineté nationale tout en laissant évoluer les Etats dans le libre jeu de leurs activités. La pratique de nos institutions a confirmé cette théorie. Malgré quelques tentatives d'empiétements, le pouvoir d'Ottawa n'a pu empêcher les provinces d'accroître leur autonomie.

Groulx's chief criticism of Confederation, which in 1918 he

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14. L.-O. David, L'Union des Deux Canadas, 1841-67

(Montréal, 1898), 277.

15. Ludovic Brunet, La Province du Canada: Histoire Politique de 1840 à 1867 (Québec, 1908), 298



thought was breaking up because of western discontent, was that it had failed to provide adequate protection for the minorities. The English Protestant minority in Quebec had received full security, but the French and Roman Catholic minorities had not received equal guarantees. He wrote:

Car il ne faut point se lasser de le dire:  
c'est là et pas ailleurs, que se trouvent le  
vice fondamental de notre constitution et la  
grande faute des hommes d'Etat bas-canadiens.  
En laissant aller les privilèges et les exceptions  
trop exclusivement d'un côté, en laissant créer  
une situation de privilège en faveur du plus fort,  
ils ont admis en principe qu'il y aurait en ce  
pays deux poids et deux mesures.<sup>16.</sup>

In other words, the greatest failure of 1867 was precisely that it had not been based on a cultural compact which guaranteed French Canadians and Roman Catholics outside Quebec the same rights as those given English-speaking Protestants in Quebec. In his view of the nature of Confederation Groulx, was closer to the conclusions of English-Canadian writers than to Henri Bourassa and his supporters. It may be added that in this, though on few other matters, Groulx was also in essential agreement with the other great French-Canadian historian of that generation, Thomas Chapais.<sup>17.</sup>

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16. Abbé Lionel Groulx, La Confédération canadienne (Montreal, 1918), 207, 168.

17. Thomas Chapais, Cours d'Histoire du Canada, Tome VIII (Québec, 1934), 215.





But whatever historians may have concluded about the nature of Confederation in the matter of minority rights, there was by 1921 little dispute on the subject of provincial rights. The legal theoreticians still found it worthwhile to repeat the now well-worn arguments for provincial autonomy. Writing in the spring of 1918, Léon-Mercier Gouin used the old arguments for the compact theory, but he gave them a new twist. He wrote:

Nous ne saurions trop insister sur l'indépendance relative de nos provinces. Il est de l'essence d'une fédération que les assemblées locales jouissent d'une pleine liberté dans la sphère législative qui leur a été assignée. C'est ainsi que le pacte fédéral devait permettre à la population du Québec de rester officiellement française et catholique. Notre parlement "à nous" siège en notre vieille capitale, à la cour de la Nouvelle-France. C'est pour toute notre race une véritable assemblée nationale. On lui a confié la garde de nos institutions les plus chères. Fatigués du régime odieux de 1840, nous devons être enfin "chez nous." Le système fédératif promettait d'assurer notre survivance. Nous entrons librement dans le "Dominion". La loi impériale qui forme la base de notre constitution n'est que l'expression légale et officielle de la volonté des parties contractantes. C'est la rédaction solennelle du "désir exprimé par les provinces".



On y trouve les éléments d'un véritable contrat<sup>18.</sup>  
de société, revêtu de la sanction royale.

Most of the argument was venerable, but it contained the seeds of later view of Confederation that was to identify<sup>19.</sup> fully and clearly nation and province. The implications of that identification were hardly hinted at before 1921, though the quasi-separatist views of some of the contributors to Notre Avenir politique: Enquête de l'Action française of 1922 were based on that identification.<sup>20.</sup>

The termination of the war in 1919 and the subsequent political instability of the years of reconstruction marked the beginning of a decade of firmly entrenched provincial power. Provincial governments found little difficulty in fending off intermittent efforts to restore the federal ascendancy. It is perhaps fitting that at the end of that decade it was the Premier of Ontario, Howard Ferguson, who issued a new provincial rights manifesto, giving a full exposition of the compact theory. Though a Conservative, Ontario had found in Premier Ferguson a fitting heir for the mantle of Mowat. Premiers Taschereau and Duplessis left no doubt that Mercier's vision was still alive in Quebec. The old weapons were once again brought out to fight new battles. It seems hardly necessary to add that in the campaigns that followed, it was only on rare occasions that

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18. Léon-Mercier Gouin, "Equisse de Droit Constitutionnel,"  
Revue Trimestrielle Canadienne (mai 1918), 71.







the voices of those who spoke of the compact of cultures could be heard over the din.

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19. Michel Brunet, Canadians et Canadiens (Montréal, 1954), 30.

20. Notre Avenir politique: Enquête de l'Action française (Montréal, 1923). Yet even in this volume, concern for the fate of the minorities outside Quebec remained something of an obstacle to that identification.

